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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 196.

THE JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM M. WARREN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED FEBRUARY 2, 1900.

(17,634.)

(17,631.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 9, 1900.

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a In the Supreme Court of Ohio.

THE JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY of Massachusetts, Plaintiff in Error,
vs.
WILLIAM M. WARREN, Defendant in Error. } 5693.

Record.

W. Z. Davis, Geo. K. Nash, attorneys for plaintiff in error.
F. M. Marriott, J. S. Jones & Sons, attorneys for defendants in error.

Filed Oct. 23, 1897, in supreme court of Ohio.
J. B. ALLEN, *Clerk.*

1 Supreme Court of Ohio.

THE JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY OF Massachusetts, Plaintiff in Error,
vs.
WILLIAM M. WARREN, Defendant in Error.

Petition in Error.

Filed August 30, 1897.

The plaintiff in error says that it was plaintiff below, and that the said William M. Warren was defendant below in a certain action and proceeding pending in the circuit court of Delaware county, Ohio. That at the May term of said circuit court said William M. Warren recovered a judgment against the said plaintiff in error, affirming a judgment theretofore rendered by the common pleas court of said Delaware county, between the parties hereto, as appears by the record in said case.

The said plaintiff in error files herewith the original pleadings and the bill of exceptions taken and allowed in the trial of said action, and the transcript of the docket and journal entries of said common pleas and circuit courts.

2 Plaintiff in error further says that there is manifest error prejudicial to it in said proceedings of record in said circuit court in this to wit:

1. Said circuit court erred in finding and holding that there is no error apparent on the record of said proceedings and judgment of said common pleas court, and in affirming said judgment.

2. Said circuit court should have reversed said judgment of the common pleas court, because the same was not sustained by the evidence and was contrary to law.

3. And there are other errors prejudicial to the plaintiff in error manifest upon the face of the record.

Wherefore, plaintiff in error prays that said judgment of said

circuit court be reversed, vacated and held for naught, and that it be restored to all things which it has lost by reason hereof.

W. Z. DAVIS AND
GEO. K. NASH,
Attorneys for Plaintiff in Error.

Defendant in error in the above-entitled action hereby waives the issuing and service of summons in error, and enters his appearance herein.

F. M. MARRIOTT.
J. S. JONES & SONS.

3 *Transcript of Journal Entries.*

Filed in supreme court August 30, 1897.

This cause came on for hearing upon the petition in error, the transcript and the original papers, and pleadings from the court of common pleas of Delaware county, and was argued by counsel; on consideration whereof the court find there is no error apparent on the record in said proceeding and judgment.

It is therefore considered by the court that the judgment be, and the same hereby is affirmed, and that the defendant in error recover from the plaintiff in error his costs herein expended, taxed at $—, and the court being of opinion that there was reasonable ground for proceedings in error, allow no penalty. It is further ordered that a special mandate be sent to the court of common pleas of Delaware county for execution upon this judgment, to which ruling and judgment of the court, the plaintiff in error did at the time except.

Certificate of clerk attached.

4 Court of Common Pleas, Delaware Co., O.

WILLIAM M. WARREN, Plaintiff,
vs.
THE JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY OF Boston, Mass., Defendant.

Petition.

Filed June 5, 1896.

Plaintiff says that the defendant is a corporation, duly incorporated under the laws of the State of Massachusetts, and duly authorized under the laws of the State of Massachusetts and of the State of Ohio to transact business in the State of Ohio, and doing business in the State of Ohio. Plaintiff further says that he is the father of George E. Warren, hereinafter mentioned, now deceased, and was at the times hereinafter mentioned, surety for the said George E. Warren on outstanding promissory notes in the sum of between sixteen and twenty thousand dollars, bearing interest at the rates of seven and eight per cent., the exact amounts plaintiff cannot more definitely state; and said George E. Warren was in-

debted otherwise to the plaintiff in the sum of eight hundred dollars; and plaintiff says that his said son, Geo. E. Warren, entered into a contract, to wit, on the 27th day of September, 1895, with the defendant company, by which, in consideration of the premium of two hundred and thirty-eight dollars, to be paid on or before the 27th day of September in every year, the said defendant company thereupon by its written contract of insurance, duly executed and delivered to said George E. Warren, on the date aforesaid,
5 did agree and contract by its policy of insurance (a copy of which is annexed hereto as an exhibit only, marked "Exhibit A"), to pay at its office in Boston five thousand dollars to Geo. E. Warren twenty years from the date of said policy; or in case of prior decease, to his father, William M. Warren, if then living, otherwise to the executors or administrators of said insured.

Plaintiff says that his said son, George E. Warren, on the 26th day of November, 1895, in the county of Delaware, State of Ohio, died.

Plaintiff further says that said policy of insurance was delivered and the first premium thereon paid during the lifetime and good health of the insured, to wit: on the 27th day of September, 1895, and that the said Geo. E. Warren did, during his lifetime, punctually pay all premiums upon said policy and perform all and singular the conditions of said policy to be by him kept and performed, and that this plaintiff has complied with all conditions and requirements of said policy to be complied with by him; and did, on or about the 2d day of December, 1895, duly notify said defendant company at its office in Boston, of the death of the said George E. Warren, presenting said company with proofs thereof as required by said policy of insurance; that plaintiff, as the father of said George E. Warren, deceased, and as the beneficiary under said policy, has duly demanded payment of the amount due him upon said policy of insurance from said company, which it has failed and refused to pay, and still refuses so to do.

Plaintiff says that on or about the 5th day of December, 1895, he forwarded to the company at its office in Boston the proofs required by the policy of insurance, and the same were received and retained by said company, and said company still retains the same; and afterwards, to wit: on or about the fourth day of January,
6 1896, the defendant company rejected said claim and refused to pay the same, and then and there and thereby waived any further demand or additional proofs of loss under said policy.

There is therefore due said plaintiff from said defendant company upon said policy of insurance the sum of five thousand dollars, with interest from the 5th day of December, 1895, for which he asks judgment.

MARRIOTT & WICKHAM,
J. S. JONES & SONS,
Attorneys for Plaintiff.

Verification attached.

Precipe.

Filed June 5, 1896.

To clerk:

Issue summons for the defendant, The John Hancock Mutual Life Insurance Company, of Boston, Mass., directed to the sheriff of Delaware county, Ohio, returnable according to law, indorsed, civil action for the recovery of money only; amount claimed, $5,000.00, with interest from the 5th day of December, 1895.

MARRIOTT & WICKHAM,
J. S. JONES & SONS,
Attorneys for Plaintiff.

EXHIBIT A.

No. 41531. Amount, $5,000.

The John Hancock Mutual Life Insurance Company of Boston, Mass.,

In consideration of the premium of two hundred and thirty-eight dollars, to be paid on or before the twenty-seventh day of September in every year, promises to pay at its office in Boston five thousand dollars to George E. Warren, of Prospect, Ohio, the insured in this policy, twenty years from the date hereof, or, in case of prior decease, to his father, William M. Warren, if then living, otherwise to the executors or administrators of said insured, upon satisfactory proof to it, at its office in Boston, of
7 the death of the insured; deducting therefrom any indebtedness to this company of the other parties to this contract, and the premium, if any, for the balance of the policy year; subject to the following conditions:

This policy shall not take effect until delivered and the first premium hereon paid during the lifetime and good health of the insured.

If any of the statements made in the application for this policy, which application is hereby referred to and made a part hereof, are in any respect untrue, or if any of said premiums shall not be paid when due, this policy shall be void, except as hereinafter agreed.

This policy shall be incontestable after two years from its date.

If the third, or any subsequent annual premium or installment thereon, shall not be paid when due, this policy shall not become void, but the company will (there being no existing indebtedness as aforesaid)—

After payment of premiums for—	Without any action on the part of the insured, continues this policy as paid-up insurance, for—	Pay on legal surrender on any anniversary of its issue a cash value of—
2 full years	$250	$292.65
3 " "	850	465 20
4 " "	1,145	645.45
5 " "	1,430	833.70
6 " "	1,710	1,030.50
7 " "	1,980	1,236.20
8 " "	2,250	1,451.40
9 " "	2,510	1,676.55
10 " "	2,770	1,912.20
11 " "	3,015	2,159.05
12 " "	3,260	2,417.60
13 " "	3,500	2,688.40
14 " "	3,730	2,972.20
15 " "	3,955	3,269.70
16 " "	4,175	3,581.85
17 " "	4,390	3,909.60
18 " "	4,600	4,254.15
19 " "	4,800	4,617.25
20 " "	5,000	5,000.00

8 NOTE.—If surplus is applied to purchase of additional insurance, the sums in the above table will be increased.

No suit shall be brought against the company on any claim under this policy, unless commenced within two years from the time when the right of action accrues.

Any assignment of this policy shall be void, unless assented to in writing by the secretary, and the claim of any assignee shall be subject to proof of interest.

No person except the president or secretary is authorized to make, alter or discharge contracts or waive forfeitures.

This contract is made and to be performed in the Commonwealth of Massachusetts.

In witness whereof, the John Hancock Mutual Life Insurance Company has, by its president and secretary, executed and delivered this contract, at Boston, on this twenty-seventh day of September, A. D. 1895.

S. H. RHODES, *President.*

ROWLAND O. LAMB, *Secretary.*

Copy of application to the John Hancock Mutual Life Insurance Company, Boston, Mass. Declarations made to the medical examiner in answer to questions to be asked only by him, in private, and answered by the person examined, the answers forming part of the policy contract.

1. Full name, George E. Warren.

2. Place of birth—town, Warrensburg; county, Delaware; State, Ohio.

3. Date of birth—year, 1864; month, December; day, sixteenth.

4. Age at next birthday, 31 years.

5. Residence—town, Prospect; county, Marion; State, Ohio.

6. *a.* Present occupation? Wholesale dealer in hay and grain. *b.* Former occupation? School teacher.

7. Do you contemplate a change of residence or occupation? No.

8. Have you ever sought a change of climate or occupation on account of your health? No.

9. Are you now in good health? Yes.

10. Have you been successfully vaccinated? Yes.

9 11. *a.* Have you been obliged to consult a doctor at any time during the last ten years? If so, when and for what? *a.* 1893, malarial fever, one week's duration.

b. When and for what did you last consult a doctor? *b.* Malarial fever in 1893, as stated above.

c. Are you now under a doctor's care? If so, for what? *c.* No.

d. Name and residence of your usual medical attendant? *d.* Dr. A. L. Gast, Prospect, Ohio.

12. *a.* Do you use ardent spirits, wine or malt liquors? If so, to what extent—average quantity each day? *a.* No.

b. Have you ever used intoxicating liquors to excess? *b.* No.

c. Are you now using opium, morphia or other narcotic, or have you ever used them? *c.* No.

d. To what extent do you use tobacco? *d.* None.

13. Has any proposal or application to insure your life ever been made to any company or agent upon which a policy has not been issued, or is any now pending? If so, give full particulars. No.

14. Has any medical examiner ever given an unfavorable opinion in regard to the insurableness of your life? No.

15. Family history:

Father—age, 60 years; condition of health, good.

Mother—age at death, 31 years; cause of death, puerperal fever; how long sick, died one week after birth of child; previous health good.

Brothers—full—age, 29 years; condition of health, good; half—age, 14 years; condition of health, good; number living, two; number dead, none.

Sisters—full—age, 35, 33, 25 years; health, good; half—age, 16 and 12 years; health, good; full—age at death, one week, died at same time as mother; half—age at death, 5 years; cause of death, membraneous croup; how long sick, two days; previous health, good; number living, three full and two half; number dead, two.

Father's father—age at death, 79 years; cause of death, and how long sick, unknown to applicant; previous health, good.

Father's mother—age at death, 75 years; cause of death, and how long sick, unknown to applicant; previous health, good.

Mother's father—age at death, 76 years; cause of death, and how long sick, unknown to applicant; previous health, good.

Mother's mother—age at death, 65 years; cause of death, and how long sick, unknown to applicant; previous health, good.

16. Have any of your near relatives (including uncles and aunts) now or ever had consumption, cancer, apoplexy or other hereditary disease (state ages and other particulars)? No.

17. Which parent do you resemble in appearance and constitution? Father.

18. Have you ever had or been predisposed to any of the following diseases or infirmities? If so, state the full particulars, giving dates, severity, duration, nature and number of attacks? Answer yes or no to each.

Apoplexy. No.
Asthma. No.
Bronchitis. No.
Cancer or tumor. No.
Colic of any kind. No.
Coughs, prolonged. No.
Discharge from the ear. No.
Disease of the brain. No.
Disease of the heart. No.
Disease of the lungs. No.
Disease of the throat. No.
Disorder of the liver. No.
Disease of the bladder. No.
Disease of the kidneys. No.
Dizziness. No.
Dropsy. No.
Diarrhœa, habitual. No.
Dyspepsia. No.
Fistula. No.
General debility. No.
Fits. No.
Gout. No.
Gravel. No.
Headache, frequent or severe. No.
Insanity. No.
Lumps or swellings. No.
Open sores. No.
Pain in back. No.
Paralysis. No.
Palpitation. No.
Piles. No.
Rheumatism. No.
Rupture. No.
Scrofula. No.
Skin disease. No.
Spitting of blood. No.
Stricture of urethra. No.
Swelling of the feet. No.
Syphilis. No.
Varicose veins. No.

If there is rupture, of what kind is it? Is it reducible, and is a truss worn.

19. Have you ever had any illness or disease other than as stated by you above? State full particulars. No.

I hereby warrant that all the statements and answers made by me above are complete and true. I agree that there shall be no contract of insurance until a policy shall have been issued and delivered, and the first premium thereon paid, while I am in good health, and if said policy be issued, this application, with answers made to the medical examiner, shall be a part thereof, and I waive all provisions of law preventing any physician from disclosing any information acquired in attending me in a professional capacity or otherwise, or rendering him incompetent to testify as a witness in any way whatever.

In any distribution of surplus, the principle and methods which may be adopted by the company for such distribution, and its determination of the amount equitably belonging to such policy, shall be accepted by, and for, every person who shall have any interest under said policy, and the receipt of the person whose life is insured, shall be in full surrender of all dividend additions to the policy.

GEO. E. WARREN, *Applicant.*

Witness:

J. B. SCHUELLER, M. D.

Dated at Columbus, O., on the seventeenth day of September, 1895.

Summons.

Filed June 9, 1896.

To the sheriff of Delaware county:

You are commanded to notify the John Hancock Mutual Life Insurance Company, of Boston, Mass., that it has been sued by William M. Warren, in the court of common pleas of Delaware county, and that unless it answer by the 4th day of July, A. D. 1896, the petition of the said plaintiff against it, filed in the clerk's office of said court, such petition will be taken as true, and judgment rendered accordingly.

You will make due return of this summons on the 15th day of June, A. D. 1896.

Certificate of clerk attached.

Sheriff's Return.

Received this writ on the 5th day of June, 1896, and on the 8th day of June, 1896, I served the same on the within-named defendant, The John Hancock Mutual Life Insurance Company, of Boston, Mass., by delivering a true and certified copy thereof, with all endorsement- thereon, personally, to John L. Wolfley, chief officer of the agency of said company in Delaware county, Ohio.

STEPHEN P. THRALL, *Sheriff,*
By CHAS. E. THRALL, *Deputy.*

12 *Answer.*

Filed August 31, 1896.

First defense. For answer to the plaintiff's petition, the defendant admits that it is a corporation, duly incorporated under the laws of the State of Massachusetts, and duly authorized under the laws of the State of Massachusetts, and of the State of Ohio to transact business in the State of Ohio, and is doing business in the State of Ohio; that the plaintiff was the father of George E. Warren, now deceased; and that the said George E. Warren on the 27th day of September, 1895, entered into a written contract of insurance with the defendant company, by which in consideration of a premium

of two hundred and thirty-eight dollars ($238.00), to be paid on or before the 27th day of September of every year, the defendant agreed to pay the said George E. Warren the sum of five thousand dollars ($5,000) in twenty years from the date of said policy, or in case of his death prior to that time to pay said sum to the plaintiff, William M. Warren, if then living, otherwise to be paid to the executors or administrators of said George E. Warren, a true copy of which contract is attached to the petition, and marked "Exhibit A."

The defendant further admits that said contract or policy of insurance was delivered to the said George E. Warren on the 27th day of September, 1895, that the first premium thereon was paid upon said date, and that said George E. Warren died on the 26th day of November, 1895.

In regard to the allegations contained in said petition about the said George E. Warren having been indebted to the plaintiff at the time said policy of insurance was issued, in large sums of money, this defendant has no knowledge except such as it derives
13 from the plaintiff's petition, and therefore it denies each and every allegation of this character in the plaintiff's petition contained.

The defendant also denies that the said George E. Warren was in good health on the 27th day of September, 1895, at the time said policy of insurance was delivered, and the first premium thereon paid, and it further denies each and every allegation contained in the petition which has not heretofore in this answer been specifically admitted.

Second defense. The defendant says that the policy of insurance set forth in the plaintiff's petition, and upon which his action is based, was issued upon an application made by the deceased, George E. Warren, to this defendant, which application is referred to and made a part of said policy of insurance, and that said policy of insurance provided that if any of the statements made in said application are untrue in any respect, said policy shall be void.

The defendant further says that the said application of the said George E. Warren contained certain interrogatories therein, in answer to which interrogatories the said George E. Warren stated that at the time said application was made he was in good health, that he had not been obliged to consult a doctor during the ten years last preceding the date of said application except once, and that was in 1893, for malarial fever, which sickness was of one week's duration; that the last time he had consulted a physician was in the year 1893, on account of said attack of malarial fever; that he had never had or been predisposed to the disease known as syphilis, and that he had never had any illness or disease other than malarial fever in 1893.

The defendant says that at the time said statements were
14 made, they were all and each of them false and untrue, and were known to be so by the said George E. Warren at the time he made them, and that they were made by said George E. Warren for the purpose of defrauding this defendant.

The defendant also says that at the time said application was

made, the said George E. Warren had syphilis and he knew it; that he had been obliged frequently during the ten years immediately preceding the making of said application, to consult a physician on account of said disease; that he had had a disease or diseases other than as stated in his said application, and that he was not at the time said application was made, in good health.

This defendant says that the said statements in said application contained were the basis upon which the said contract or policy of insurance mentioned in the plaintiff's petition was issued, and that said contract of insurance would not have been entered into, and said policy of insurance would not have been issued, except that this defendant relied upon the truthfulness of said statements, and this defendant is not liable upon said policy of insurance, and prays to be discharged from this action, and to recover its costs herein.

NASH & LENTZ AND
W. Z. DAVIS,
Attorneys for Defendant.

Verification attached.

Reply.

Filed September 10, 1896.

The plaintiff, William M. Warren, now comes, and for his reply to the first defense in defendant's answer filed herein says, that he denies that the said George E. Warren was not in good health on the 27th day of September, 1895, at the time said policy of insurance was delivered and the first premium paid thereon.

15 And for his reply to the second defense plaintiff admits that the policy of insurance set forth in the petition, and upon which plaintiff's action is based, was issued upon an application made by the deceased, George E. Warren, to the defendant, and that said application is referred to and made a part of the policy of insurance, but plaintiff is unadvised as to whether the alleged copy of said application attached to the policy is a true copy of the original application, or whether the questions and answers as therein shown, and as set forth in the answer, are true, and therefore denies the same.

Plaintiff admits that said deceased, George E. Warren, in answer to certain interrogatories in said application, stated at the time of making said application that he was in good health, but plaintiff denies that at the time said application was made by the said George E. Warren, he was not in good health, or that all or any of the statements therein made were false and untrue, and denies that the said George E. Warren knew them or any of them to be false and untrue, and denies that any statements were made for the purpose of defrauding defendant.

Plaintiff denies that at the time said application was made said George E. Warren had syphilis and knew it; denies that he had been obliged frequently during the ten years immediately preceding the making of said application to consult a physician on account of said disease.

Plaintiff denies each and every averment in the second defense of defendant's answer not herein specifically admitted to be true.

MARRIOTT & WICKHAM,
J. S. JONES & SONS,
Attorneys for Plaintiff.

Verification attached.

16 *Granting Leave to File Amended Reply.*

Filed January 25, 1897.

This day upon application by the plaintiff for leave to file amendment to reply, the court grants such leave to file amendment instanter, which is accordingly done, to which leave to file such amendment the defendant by counsel did except, and thereupon by agreement of counsel this case is assigned for trial *and* the 25th day of January, 1897, to which date the cause is postponed.

T. M. MARRIOTT,
J. S. JONES & SONS.

Amendment to Reply.

Filed January 25, 1897.

Now comes the plaintiff, and by leave of court first obtained herein, files the following amendment to his reply:

After the word "disease" at the end of the fifth line on the second page, and before the word "plaintiff" at the beginning of the sixth line on said second page of said reply, insert the following:

Said defendant company did not return with and as a part of said policy issued by it to the said George E. Warren, the party taking said policy, during his lifetime, or to this plaintiff at any time, a full and complete copy of each application or other document held by it which was intended to affect the force and validity of such policy, and did not furnish the said George E. Warren with a copy of the application or other papers constituting a part of said policy of insurance, nor to this plaintiff since the death of said George E. Warren.

That on or about the 29th day of February, 1896, this plaintiff demanded of the defendant a copy of the application made
17 by said George E. Warren for life insurance, and upon which the policy in this case was, with other documents, based and issued. That said defendant has wholly failed and neglected to furnish said copy, and has wholly failed to comply with said demand, though more than thirty days have elapsed since said demand was made. Whereby plaintiff avers that the defendant is now estopped from denying the truth of any such application or other document, and is estopped from setting up any incorrectness, fraud, mistake or misrepresentation whatever in said application, and is estopped to

deny the truth or correctness in any respect of any of the answers made in said application or other document.

F. M. MARRIOTT,
J. S. JONES & SONS,
Attorneys for Plaintiff.

Verification attached.

Verdict of Jury and Motion for New Trial.

Filed January 26, 1897.

This day came the parties herein by their respective counsel, and also came the following-named persons as jurors, to wit: Edward Hall, H. L. Baker, J. L. Smith, Thomas J. Cole, John E. Finch, P. P. Ingalls, Hiram Chapman, Joseph Patrick, H. H. Houser, William Dodge, W. L. Hoover, and Keefer Jacobus, who were duly empaneled and sworn according to law, and thereupon this cause came on to be heard and tried upon the pleadings and the evidence. And after hearing the evidence, argument of counsel and charge of the court, the jury retired to their rooms in charge of the sheriff for deliberation.

Now comes said jury again into open court with their verdict in writing, signed by the foreman and say: We, the jury, being 18 duly impaneled and sworn, find the issues in this case in favor of the plaintiff, and assess the amount due to the plaintiff from the defendant at the sum of five thousand three hundred and forty-three dollars and thirty-three cents ($5,343.33).

HENRY L. BAKER, *Foreman.*

Thereupon came the defendant and filed its motion for a new trial, for reasons set out therein, which was argued by counsel and submitted to the court. On consideration whereof, the court being fully advised in the premises, do overrule said motion and refuse to grant a new trial, to which judgment and ruling of the court in the overruling of said motion the defendant did by its counsel except.

It is therefore considered by the court that this plaintiff, the said William M. Warren, recover from the defendant, the said The John Hancock Mutual Life Insurance Company, the sum of five thousand three hundred and forty-three dollars and thirty-three cents ($5,343.33), as heretofore by the verdict of said jury found due him, together with the costs of this action taxed at $—. To which finding and judgment of the court the defendant did at the time except, and leave is given defendant to prepare and file its bill of exceptions herein, and the journals of this court are ordered to be kept open for the statutory time for that purpose.

GEO. K. NASH,
W. Z. DAVIS,
Attorneys for Defendant.

19 *Motion for a New Trial.*

Filed January 27, 1897.

The defendant now comes and moves the court to set aside the verdict rendered in this case, and to grant a new trial, for the reasons following:

1. That said verdict is against the weight of the evidence.
2. That the said verdict is contrary to law.
3. For the reason that the court erred in ruling out testimony offered by the defendant upon the trial, and in admitting testimony objected to by the said defendant.
4. For the reason that the court erred in refusing to charge the jury as requested by the defendant.
5. For the reason that the court erred in charging the jury as charged and as excepted to by the defendant at the time.

W. Z. DAVIS,
GEO. K. NASH,
Attorneys for the Defendant.

Entry.

Filed February 6, 1897.

Now comes the defendant, The John Hancock Mutual Life Insurance Company, and presents to the court its certain bill of exceptions herein, which being found by the court to be true, is allowed and signed and filed, and, on motion of the defendant, is hereby made a part of the record, but not to be spread upon the journal.

20 Circuit Court, Delaware County, Ohio.

THE JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY OF Boston, Mass., Plaintiff in Error,
vs.
WILLIAM M. WARREN, Defendant in Error.

Petition in Error.

Filed May 12, 1897.

The plaintiff says that it was defendant below, and that the said William M. Warren was the plaintiff below, in a certain action pending in the court of common pleas of Delaware county, Ohio; that at the January term, A. D. 1897, to wit, on the 27th day of January, 1897, the said William M. Warren obtained a judgment in his favor and against the plaintiff in error, as appears by the record in said case. Said plaintiff in error files herewith the original pleadings and the bill of exceptions taken and allowed at the trial of said action, and a transcript of the docket and journal entries.

The plaintiff in error further says that there is manifest error prejudicial to it in said proceedings and the record of said court of common pleas, in this, to wit:

1. That said verdict was against the weight of evidence.
2. That said verdict is contrary to law.
3. For the reason that the court erred in ruling out testi-
21 mony offered by the defendant upon the trial, and in admitting testimony objected to by the said defendant below.
4. For the reason that the court erred in refusing to charge the jury as requested by the defendant below.
5. For the reason that the court erred in charging the jury as charged, and as excepted to by the defendant below at the time.

W. Z. DAVIS,
GEO. K. NASH,
Attorneys for Plaintiff in Error.

The defendant in error hereby waives the issuing and service of summons in the above-entitled action, and enters his appearance herein.

J. S. JONES & SONS,
F. M. MARRIOTT,
Attorneys for Defendant in Error.

Transcript of Docket and Journal Entries.

Filed May 12, 1897.

I, Newton M. Miller, clerk of the court of common pleas within and for the county of Delaware, do hereby certify that the following entries and judgments are truly copied from the dockets and journals of said court, to wit:

Docket.

June 5, 1896, petition filed.
August 31, 1896, answer filed.
September 10, 1896, reply filed.
January 25, 1897, amendment to reply filed.
January 27, 1897, motion for a new trial filed.

Journal entries.

Journal, vol. 38, page 550, date December 5, 1896. Continued.

22 Journal, vol. 39, page 48, date January 25, 1897.

This day upon application by the plaintiff for leave to file amendment to reply, the court grants such leave to file amendment instanter, which is accordingly done, to which leave to file such amendment the defendant by counsel did except, and thereupon by agreement of counsel this case is assigned for trial *and* the 25th day of January, 1897, to which date the cause is postponed.

Journal, vol. 39, page 49, date January 26, 1897.

This day came the parties herein by their respective counsel, and also came the following-named persons as jurors: Edward Hall, H. L. Baker, J. L. Smith, Thomas J. Cole, John E. Finch, P. P. Ingalls, Hiram Chapman, Joseph Patrick, H. H. Houser, William Dodge, W. L. Hoover, and Keefer Jacobus, who were duly empaneled and sworn according to law, and thereupon this cause came on to be heard and tried upon the pleadings and the evidence. And after hearing the evidence, argument of counsel and charge of the court, the jury retired to their room in charge of the sheriff for deliberation.

Now comes said jury again into open court with their verdict in writing, signed by the foreman and say: We, the jury, being duly impaneled and sworn, find the issues in this case in favor of the plaintiff, and assess the amount due to the plaintiff from the defendant at the sum of five thousand three hundred and forty-three dollars and thirty-three cents ($5,343.33).

HENRY L. BAKER, *Foreman.*

Thereupon came the defendant and filed its motion for a new trial, for reasons set out therein, which was argued by counsel and submitted to the court. On consideration whereof, the court being fully advised in the premises, do overrule said motion and
23 refuse to grant a new trial, to which judgment and ruling of the court in the overruling of said motion the defendant did by its counsel except.

It is therefore considered by the court that this plaintiff, the said William M. Warren, recover from the defendant, the said The John Hancock Mutual Life Insurance Company, the sum of five thousand three hundred and forty-three dollars and thirty-three cents ($5,343.33), as heretofore by the verdict of said jury found due him, together with the costs of this action taxed at $—. To which finding and judgment of the court the defendant did at the time except, and leave is given defendant to prepare and file its bill of exceptions herein, and the journals of this court are ordered to be kept open for the statutory time for that purpose.

Journal, vol. 39, page 86, date February 6, 1897.

Now comes the defendant, The John Hancock Mutual Life Insurance Company, and presents to the court its certain bill of exceptions herein, which being found by the court to be true, is allowed and signed and filed, and, on motion of the defendant, is hereby made a part of the record, but not to be spread upon the journal.

Certificate of clerk attached.

Journal Entry.

Filed May 26, 1897.

This cause came on for hearing upon the petition in error, the transcript, and the original papers, and pleadings from the court of

common pleas of Delaware county, and was argued by counsel; on consideration whereof the court find there is no error apparent on the record in said proceeding and judgment.

It is therefore considered by the court that the judgment
24 be, and the same hereby is, affirmed, and that the defendant in error recover from the plaintiff in error his costs herein expended, taxed at $—, and the court being of opinion that there was reasonable ground for proceedings in error, allowed no penalty. It is further ordered that a special mandate be sent to the court of common pleas of Delaware county for execution upon this judgment, to which ruling and judgment of the court the plaintiff in error did at the time except.

O K. W. Z. DAVIS, GEO. K. NASH, O K.
Attorneys for Defendant.

25 *Bill of Exceptions.*

Filed February 8, 1897.

Present: For the plaintiff: Messrs. Marriott and Jones. For the defendant: Judge George K. Nash and Mr. Davis.

Be it remembered that at the trial of this cause in the court of common pleas of Delaware county, Ohio, at the January term, A. D. 1897, before the Hon. J. B. Waight, judge, and a jury, the plaintiff, to maintain the issues on his part to be maintained, introduced and offered in evidence the following testimony, to wit:

WILLIAM M. WARREN, called on behalf of the plaintiff, being first duly sworn, testified as follows:

Examined by Mr. JONES:

Q. What relation were you to George E. Warren, deceased?
A. His father.
Q. Will you please state to the jury whether or not prior to his decease you were a creditor of his to any extent, and if so in what way?
A. I was; he owed me a note of $800.
Q. Were you on his paper or obligated for him in any way?
A. Yes, sir.
Q. If so, please state to what extent?
A. I was on his notes to about $19,000.
Q. How much?
A. $19,000.
Q. Were you on those notes prior to September, 1895?
A. Well, some of them run about a year, pretty nearly that, and some a little less, and I guess some was a little over a year, or two years probably.
Q. Do you remember when George Warren died?
A. November 26th, 1895.
26 Q. Was he in good health up to the time of his death?

Question objected to by counsel for defendant; objection sustained.

Judge NASH: We also ask to have the answer in regard to the indebtedness on account of his son stricken out, for the purpose of saving the question.

The COURT: The court was under the impression on the statement of the issue by counsel that the burden was with the defendant, and that the relation of father and son created an insurable interest, and that I may examine further and pass upon it finally; you may have an exception if the court does not sustain this objection.

Q. What was the age of George E. Warren at the time of his death?

A. He was about 31 years old, I think; 30 to 31.

Q. Was he at that time, and if so, how long previous to that time had he been doing business by himself, on his own account?

A. Well, ever since he was of age.

Q. Was he or was he not a married man?

A. Yes, sir.

Q. He had a family of his own, had he?

A. He had no family but his wife.

Q. He was not living as a member of your family at any time after he was 21 years of age?

A. No, sir; well, he might have been there a short time, but the most of the time he was away.

No cross-examination.

Thereupon counsel for plaintiff introduced and offered in evidence the original policy of insurance.

The COURT: That is admitted in the pleadings.

And thereupon the plaintiff rested.

27 And be it further remembered that the defendant, to maintain the issues on his part to be maintained, introduced and offered in evidence the following testimony, to wit:

Dr. W. S. WELLS, called on behalf of the defendant, being first duly sworn, testified as follows:

Examined by Mr. DAVIS:

Q. Where do you reside?

A. Marion, Ohio.

Q. What is your occupation?

A. Physician and surgeon.

Q. How long have you been engaged in that business?

A. Six years.

Q. Where did you receive your medical education?

A. In Cleveland and in Chicago.

Q. I will ask you if you were acquainted with George E. Warren, of Prospect, Ohio.

A. Well, I cannot answer that question specifically; I knew a man who was represented to be George E. Warren, and I guess there is no doubt that it was him, owing to the fact that his checks were honored in Prospect——

Mr. MARRIOTT: That portion of the answer we ask to be stricken from the record, "owing to the fact that the checks had been honored."

Motion sustained.

Q. When did you become acquainted with Mr. Warren?

A. In 1893.

Q. At what time in the year '93?

A. Well, if you will excuse me I can get my book or send for it in the clerk's office; I left my book there with him; I think it was in February.

Q. You may state under what circumstances you became acquainted with him.

A. He came to me for professional services.

Q. Where did you meet him?

A. In my office.

28 Q. In what place?

A. Well, my office and residence was over Mr. Hoy's drug store in Marion.

Q. In the city of Marion?

A. Yes, sir.

Q. Do you know where Mr. Warren was stopping at that time?

A. Yes, sir.

Q. State to the jury where he was stopping.

A. He was stopping at the Hotel Marion.

Q. You may tell the jury now, after referring to your book, about what time that was.

A. February 19th, 1893.

Q. State to the jury what Mr. Warren told you at that time in reference to his health and physical condition.

Mr. MARRIOTT: We object to the question for the purpose of raising a question which will appear in this case further along, and we object to his stating anything that he said to him upon the ground that it was a professional communication and under our statute is incompetent.

(Which objection the court overruled, and to which ruling of the court the plaintiff excepted.)

Question read.

A. Well, he came into my office and made himself known, and he said——

Q. Right at that point, did he state where he lived?

A. Yes, sir; he said that his home was in Prospect, and that he was a married man and had a nice family, and that everything he said was to be kept in strict confidence, but if he has waived this and I have to tell it, I suppose I will have to break his confidence. He told me his business; he was a hay baler, buying up hay and

shipping it, and he had met a woman of easy virtue who was a nice-looking woman, and he stepped over the fence. I think those were his exact words, as near as I can remember——

29 Mr. MARRIOTT: We object to that, your honor, as perfectly immaterial.

The COURT: Go on and finish your answer.

A. He said that he did not want his family to know anything about it, and he wanted to know the best possible way that he could arrange so his wife would not know anything about it, and I told him that I thought he had gonorrhea, and the best thing, if he could so arrange, would be to remain there in Marion; and he did so, and I treated him for a week, after which time he passed out of my hands.

Q. Did he state his name to you at that time?

A. Yes, sir.

Q. As well as his occupation and place of residence?

A. Yes, sir; I have his name down here, George Warren.

Q. How long did he stay at the Hotel Marion under treatment by you?

A. Well, a week; he may have gone away five or six times for a half day.

Q. Do you know anything about what excuse he made to his wife for remaining in Marion?

Question objected to by the plaintiff.

A. Just what he told me.

Q. I asked you if you knew?

A. I saw a telegram that he was going to send; I did not see him send it, but I saw a telegram that he had written to send her, and he asked me if it was all right and I told him it was.

Q. What was in that telegram?

Question objected to by the plaintiff.

The COURT: I think that the excuse that he made to his wife for his absence would not reflect any light upon his trouble, and the objection may be sustained and an exception saved for the defendant.

30 Q. Now, Doctor, please tell the jury whether you made an examination of Mr. Warren at that time?

A. I did.

Q. What did you ascertain from that examination?

A. I diagnosed a case of gonorrhea.

Q. What did you see?

A. Well, I saw a mutilated penis, and there was a pus discharged from the meatus of the urethra, a constitutional disturbance such as follows a case of gonorrhea.

Q. You advised him as to what it was?

A. Yes, sir.

Q. What did you tell him it was?

A. I told him it was gonorrhea.

Q. Did you examine the urethral passage?

A. Yes, sir.

Q. What if anything did you find there? What did you discover?

Question objected to by the plaintiff; objection overruled.

A. Have you reference to the first time he was in the office?

Q. Well, at the time you made the examination of the urinary canal?

A. Well, I found a stricture.

Q. You may state to what extent there was a stricture?

A. Well, it was a stricture—it was quite a good-sized stricture, perhaps as large a stricture as we usually get in those cases of gonorrhea.

Q. What did you deem it necessary to do in the treatment of the stricture?

A. I introduced an instrument to dilate the stricture, to break it up, so to speak, to break up the tissue.

Q. What is the instrument called?

A. A bougie, or urethral sound; I used a bougie; either one can be used.

31 Q. How often was the instrument used upon the patient during the week that he was in Marion?

A. I used it every day myself.

Q. How often did you furnish him a prescription?

A. I did not furnish him any prescription at all; I furnished him the medicine.

Q. You furnished him the medicine?

A. Yes, sir.

Q. You may state whether Mr. Warren made use of the bougie during the time he was in Marion.

A. Yes, sir.

Q. What if any instrument did you give him when he left you at the end of the week?

A. I gave him a bougie and told him to introduce it about every other day for a few days and then every third day until he could notice that he could introduce the bougie without any trouble. By the way, I wish to say that I asked him to introduce the bougie so that I was sure he could do it himself before I let him go.

Q. You may state whether he had recovered when he left your hands.

A. Not fully, no, sir.

Q. He had not?

A. No, sir.

Q. State to the jury whether the trouble that you found there was accompanied with any bladder difficulty.

A. Yes, sir; he had a little cistitis.

Q. State to the jury what that is.

A. A little inflammation of the bladder.

Q. From what you saw, Doctor, will you state to the jury whether that case was one of more than ordinary violence?

Mr. MARRIOTT: Let him describe what it was.

The COURT: He may state as to the degree of the disease if there are any degrees in this case.

A. There is only one classification, perhaps, mild, grave and most grave and graver; that is all the classifications.

Q. What classification would you put that in?

32 A. It was quite a grave form; it was not the most grave case that I ever had or have ever seen, nor one of the most mild by any means; it was quite a grave case.

Q. You may state whether the general health of Mr. Warren, apart from those symptoms you have described, seemed to be disturbed.

A. Yes; I gave him a general tonic——

Witness stopped by objection of plaintiff.

The COURT: I think this question is in the line of the proof of the troubles of the assured as are alleged as invalidating this policy. I think this question may be answered and an exception noted for the plaintiff.

Exception by plaintiff to ruling of the court.

A. I think not; I think I described all.

Q. What, if any, constitutional symptoms were present in Mr. Warren's case at the time you had him under treatment?

A. Well, those commonly following gonorrhea, which is disturbed digestion, a slight chilly condition and a very little septic infection perhaps, and constipation, and those usual premonitory symptoms which come in any case of that kind.

Q. What, if any, eruptions, were manifest?

A. No eruptions which I noticed whatever.

Cross-examination by Mr. MARRIOTT:

Q. Doctor, this was in what month of 1893?

A. February.

Q. February, '93?

A. Yes, sir.

Q. Did I understand you to say that your book had the name of George Warren?

A. George E. Warren or George Warren.

Q. There is a great deal of difference between George Warren and George E.; now, which is it?

A. The two are the same man.

33 Q. I simply ask you what the book shows.

A. That is George Warren on this page, but here it is George E. Warren on another page; it was the same man.

Q. Now, you never saw him before that you know of until he called upon you?

A. No, sir.

Q. This man, whoever it was?

A. No, sir.

Q. You don't know now, do you, Doctor, whether the man that

you have referred to as calling upon you was George E. Warren, the son of William M. Warren here?

A. I don't know William M. Warren at all.

Q. How long had you been a resident of Marion at that time?

A. Well, I would have to stop to figure; I came to Marion January 18th, 1891, and this was in February, 1893.

Q. Well, all you know about this man he came to you and he said his name was George Warren?

A. No, sir; that is not all I know about it.

Q. What do you know?

A. I know that he did not have the cash with him and he gave me his check——

Q. I did not ask you about that; would that prove that it was George Warren, because he gave you a check?

A. Yes, sir; it was honored; the check was honored.

Q. I will ask you if it is a fact or not, Doctor, that a patient applying to a physician, when they have those private diseases, do not often give assumed names?

A. They never have to me that I know of.

Q. Do you know whether they have or not?

A. I do.

Q. You say that they never have?

A. No, sir.

Q. Did you ever treat anybody before that you did not know?

A. Well, I found out who they were, yes, sir.

Q. Did you find out from them?

A. No, sir.

Q. Then you never treated any one before for a private disease that you did know personally or found out who they were?

A. No, sir.

34 Q. Except this case?

A. I found out who they were, yes, sir.

Q. You say that that is not true that parties applying to a physician to be treated for venereal diseases that they sometimes give assumed names?

A. No, sir; I do not say so.

Q. Isn't it true?

A. I don't know, they never did to me.

Q. Do you know of any case where it has been done?

A. No, sir; I know of cases that came to my office and they would not tell me their names, but they did not give me any assumed name.

Q. What day in February did you say this was?

A. The 19th, I think it was.

Q. Do I understand you to say that the man, whoever he was, told you that he had gonorrhea or did you tell him that he had gonorrhea?

A. No; he did not tell me he had gonorrhea, but he came to me to find out.

Q. He came to you to find what was the matter with him?

A. Yes, sir.

Q. And what examination did you make, Doctor?
A. First I got a history of the case; that was my first examination.
Q. He told you, as you have stated, that he had met somebody and stepped over?
A. Yes, sir.
Q. Would that be evidence enough to your mind that the patient had gonorrhea?
A. No, sir; there are lots of people that step over that perhaps do not get gonorrhea.
Q. What is the difference between gonorrhea and urethritis?
A. Well, there isn't very much difference; gonorrhea is urethritis.
Q. Is urethritis gonorrhea?
A. Not always.
Q. Is it ever?
A. No, sir.
Q. It is not?
A. No, sir.
35 Q. I will ask you if you made any microscopical examination?
A. No, sir.
Q. Tell the jury, Doctor, where there is a case of gonorrhea whether you can positively diagnose a case of gonorrhea without finding the presence of gonococchi?
A. Well, it would not be a case of gonarrhea unless the bacilli was found.
Q. Now, can you determine then whether the bacilli or g[illegible]cocchi is present without a microscopic examination?
A. By exclusion; we are safe in making our diagnosis.
Q. I will ask you if you can make a positive diagnosis of a case of gonorrhea without finding present those germs or bacilli or whatever you may call it?
A. We probably only can determine with a diagnosis; there are cases diagnosed every day positively that bacilli is not looked for; yet if it was looked for it would be found.
Q. First tell the jury whether it is not a very fine point to determine between urethritis and gonorrhea?
A. Yes, sir; it is.
Q. You say that it is a very fine point to determine or distinguish the difference?
A. Yes, sir.
Q. I will ask you if the way to determine the difference between urethritis and gonorrhea to satisfy the mind of the physician beyound doubt, is not to make a microscopic examination?
A. Yes, sir.
Q. You made no microscopic examination of this patient?
A. No, sir.
Q. The treatment of the two is the same, is it not?
A. Well, not necessarily.
Q. Well, it is substantially the same?

A. Yes, sir.

Q. There is not much difference between the treatment for urethritis and gonorrhea?

A. No, sir.

Q. The ordinary common term clap, that is what it is, isn't it?

A. Yes, sir.

36 Q. When you speak of gonorrhea you mean clap, don't you?

A. No, sir; when you speak of clap you mean gonorrhea.

Q. They are pretty nearly synonymous terms then?

A. Yes, sir.

Q. Now, urethritis is nothing more than inflamation of the urethra?

A. Yes, sir.

Q. That produces a discharge similar to gonorrhea, does it not?

A. Very similar, yes, sir.

Q. I will ask you if it is not true that urethritis may be produced without coming in contact with a case of gonorrhea?

Question objected to by defendant; objection overruled; exception by defendant.

A. Yes, sir.

Q. Isn't it true that it may be produced and often is without even sexual intercourse?

A. No, sir.

Q. You say it is not?

—. No, sir.

Q. I will ask you if it may not be produced by extreme sexual stimulation or excitement without copulation taking place?

A. The case would be very rare, I should judge.

Q. I did not ask you whether it is rare or frequent; may it be produced in that way?

A. I don't know of any such case.

Q. That don't answer my question, Doctor. You are a medical expert here; tell the jury whether or not in medical science that is or is not true?

A. Without the administration of medicines internally or externally?

Q. I am not asking you anything about medicines; I am asking you whether it might not be produced—this urethritis, or this inflam-tion of the urethra, what you call urethritis, might not be produced by extreme sexual stimulation?

A. Well, I don't know; it might be, but I doubt it; I don't know of a case.

37 Q. I will ask you if the books are not full of that, and if they do not say that that is true?

A. What do you mean by sexual stimulation, masturbation?

Q. No, sir. I will ask, take this instance—in the case of a young man who is brought in contact with a young woman, passing through a course of two or more hours in his endeavors to accomplish his purpose and yet does not do it, may he not have urethritis?

A. Yes, sir; that is true; that comes along in the same category as sexual intercourse, trying to get there.

Q. It is not necessary then in order that a party have urethritis that he have sexual intercourse with a woman at all, is it, not necessarily so?

A. Well, as I said before, he can get it that way but it is a hard way to get it.

Q. That is, you mean it is a strain on the patient to work that long?

A. Yes, sir.

Q. Isn't that what sets up the inflammation?

A. The stimulation sets up the inflammation; yes, sir.

Q. And produces urethritis?

A. Yes, sir.

Q. Now, I will ask you if also acids in the urin- do not produce urethritis?

A. Yes, sir; sometimes and sometimes it does not.

Q. I will ask you also if sexual intercourse with a woman who is suffering from l-uchorrh-ea may produce urethritis?

A. Yes, sir.

Q. I will ask you if it is not also true that intercourse with a woman immediately before or immediately after her menstrual periods may not produce urethritis?

A. There are cases of that kind on record, yes, sir.

Q. I understand you to say it is very difficult to tell the difference between urethritis and gonorrhea?

A. You can only do it by a differential diagnosis.

Q. And the true test and the only absolute test is a microscopical examination for the presence of bacilli, isn't it?

A. The finding of the bacilli.

38 Q. If you make a microscopic examination and find an absence of the bacilli or gonococchi, you would say that this patient was not suffering from gonorrhea?

A. Yes, sir.

Q. That would be absolute proof?

A. Yes, sir.

Q. Without making that test you could not be absolutely sure that the patient had gonorrhea at all?

A. I don't think so.

Q. And did you make that test?

A. No, sir; I did not make it.

Q. You never made any microscopical examination?

A. No, sir—yes, sir; I have lots of them.

Q. I mean of this person?

A. No, sir.

Q. Now, I will ask you if there is any connection at all between gonorrhea and syphilis?

A. No, sir.

Q. They are entirely distinct are they not?

A. Yes, sir.

Q. I will ask you if it is not a fact that gonorrhea or clap is a

mere local disease and that the other disease, syphilis, is a constitutional or blood disease?

A. Yes, sir; syphilis is a constitutional disease and gonorrhea is local, with a slight constitutional disturbance, as I said before, slight indigestion, chilliness and constipation.

Q. Like a boil? A boil would produce the same thing?

A. Yes, sir; it would produce the chilly sensation; any septic introduced into the system would produce that.

Q. Would produce a slight indigestion, slight constipation?

A. Yes, sir; and it would disturb the constitution slightly.

Q. Certainly it would cause a party to be sick?

A. Slightly sick, yes, sir.

Q. The same as a boil would, wouldn't it?

A. Yes, sir.

39 Q. I will ask you if gonorrhea is any more constitutional, so far as that is concerned, than a boil.

A. No, sir.

Q. I will ask you if gonorrhea necessarily, or at all, is inimical to longevity, to long life. I will ask you if gonorrhea shortens life.

A. No, sir.

Q. I will ask you if it is easily cured or not.

A. No, sir; it is not; it is one of the most stubborn things to cure a man can treat.

Q. You thought you had this man cured when you turned him away?

A. No, sir; I did not think any such thing.

Q. Do you know Mr. Burn Jones, who sits right here?

A. Yes, sir.

Q. Was he at your office before the day on which this case was set for trial?

A. Yes, sir.

Q. Do you know Mr. Wickham?

A. Yes, sir.

Q. I will ask you if you did not tell both of them in your office that you turned him away from your office cured.

A. No, sir; I did not say so.

Q. You remember the time they were there?

A. Yes, sir.

Q. You remember talking with them?

A. I said that the discharge had ceased, but the stricture was not cured; I told them plainly that the stricture was not cured.

Q. Didn't you say to them both when you turned this man away you discharged him as cured?

A. No, sir; if I did, I would not have sent a bougie——

Q. Didn't you also say to them that there was no complications whatever with this case?

A. I said it was a case of gonorrhea, a plain case of gonorrhea, but no syphilis.

Q. Didn't you say there was no complications with it all?

40 A. I had reference to syphilis; they were making their point on syphilis and gonorrhea and I said there was no syphilis present when I had the case under my care.

Q. Didn't you say that it was a very ordinary case of gonorrhea?

A. No, sir; because I knew better and I am not in the habit of lying habitually.

Q. Well, we might find parties who disagreed with you on that point. Now, Doctor, if I understand you correctly—now, then, it is that you say that when he left you the discharge had ceased?

A. Yes, sir.

Q. I will ask you if it is not a fact that the use of this instrument that you gave some name for—what was it? The instrument that you inserted in the urethra, what was that?

A. A bougie, or urethral sound.

Q. That is better, the urethral sound; I will ask you if the insertion of that into the urethra of this patient you have described as George Warren, did not set up and produce an inflammation, and didn't it produce and cause a continued inflammation of the urethra?

A. No, sir.

Q. Do you know, as a matter of fact, that George Warren went direct from your place to Dr. Gast's office and was treated for inflammation which the urethral sound which you had used produced?

A. I don't know anything about that.

Q. I will ask you if it is not true that a stricture does not usually follow gonorrhea, but that it is a result often of the improper use of a sound inserted in the urethra?

A. I never introduce a sound or use a sound where I haven't a stricture.

Q. I did not ask you that; you say you never introduce a sound only when you have a stricture?

A. I never introduce a sound where I have no stricture.

Q. I will ask you if a stricture is not often the result of the use of a sound in an unskillful hand?

A. It may be produced by an unskillful hand.

41 Q. They often are, are they not?

A. I could not say that they often are.

Q. I want to ask you another question, Doctor; what is balanitis?

A. Well, that is an inflammation of the foreskin.

Q. Is it an inflammation of the foreskin? You mean it is an inflammation of the glands penis?

A. It is one of the complications of gonorrhea; whatever causes the cistitis or epiditis would produce the other.

Q. Isn't it the result of that extended foreskin which causes the substance or cheesy matter to set up the inflammation by getting in contact with the urin-?

A. No, sir; that is not the cause of it always.

Q. Well, is it ever?

A. It might be.

Q. Well, that produces a discharge also, does it not?

A. Not from the urethra; no, sir.

Q. But urethritis does?

A. Yes, sir.

Q. I will ask you if it is not true that balanitis is sometimes mistaken for gonorrhea?

A. I could not see why it should be.

Q. I am asking you?

A. No, sir.

Q. I want to ask you one further question, What is the size of this sound which you inserted into the urethra of this patient? What was its number?

A. At first or at any time?

Q. At any time?

A. Well, we used for those cases——

Q. I don't ask you what you use for those cases; I ask you what you did use?

A. I used the same thing for this case that I would use for any case.

Q. That is not answering my question.

A. What I use in this case was sounds of different sizes, beginning with the small one introducing just as large a sound as I could get into the stricture.

Q. Tell the jury what that largest one was, what its number was?

A. I don't know; I don't remember.

42 Q. Have you got any of them with you?

A. No, sir.

Q. About how large was it?

A. I don't remember; we have Nos. 12, 14, 16, 18, 20, 22. 22 is a very large one; I don't know just what—I think I introduced-perhaps a 12; I think 10 was the first one perhaps; I don't remember anything about that; it depends entirely upon the size of the stricture or the small opening.

Q. I will ask you if you noticed as a matter of fact that this party had an extended foreskin?

A. Well, I don't know; I don't remember about that.

Q. You have no recollection?

(No reply.)

Redirect examination by Mr. DAVIS:

Q. How much inflammation was there of the urethra of Mr. Warren at the time you first examined him?

A. Well, I could answer that only in this way, to say the discharge was very profuse; the pus discharge.

Q. Was that before you had used an instrument upon him? Did that condition of inflammation increase or diminish during the week you were treating him?

A. It diminished and the flow of the pus ceased.

Q. What became of the bougie which was used on Mr. Warren?

A. I don't know; I gave it to him and he said he would return it, but he did not; I don't know where it is.

Q. He took it away with him?

A. Yes, sir.

Q. Doctor, how do you distinguish between urethritis and the disease which you diagnosed in that case?

—. Well, by a differential diagnosis; our best authorities give us certain symptoms in gonorrhea that are not present in urethritis, and we go down the line and find certain symptoms in gonorrhea that is not in urethritis; these conditions and symptoms vary in all cases.

Q. What symptoms were there in this case?

A. Well, we had a profuse discharge that we have in gon-
43 orrhea and that we have in urethritis; some authorities say that the color is perhaps a little different in the discharge of gonorrhea and that of urethritis, but that would be perhaps an unreliable symptom; we do not usually have stricture in common case of urethritis, very seldom unless it is a very aggrevated case. As I said before, the most positive thing is, if we have not access to the microscope, to take the history as we get it from the patient, and they will always tell you, because they are anxious to get rid of it.

Q. What was there in the history of this case that would decide it in your mind as being a case of gonorrhea as stated by the patient?

Question objected to by plaintiff. Objection overruled.

A. That he had had sexual intercourse four or five days previously to his noticing any discharge, and that he came to me at that time; I think it was four or five days.

Q. Sexual intercourse with whom, did he state?

A. Well, he told me——

Q. Whether it was his wife or not?

A. He said it was not his wife; it was another woman.

Recross-examination by Mr. MARRIOTT:

Q. You say that you do find stricture present in cases of urethritis? Is that true?

A. We may find them in exaggerated cases, but we do not usually find it.

Q. Didn't you testify a moment ago that you found stricture in cases of urethritis, especially if it was an aggravated case?

A. Yes, sir.

Q. Is that true?

A. Yes, sir; sometimes we find it, and yet we might not.

Q. Now, I will ask you if it is not true also that gonorrhea will run its own course without treatment and the patient recover?

A. I don't know of any such case.

44 Q. I did not ask you what you know, Doctor; you see I have not asked you all that you know at all. I asked you if that is not true, whether or not as a medical man you will say that it is or is not true?

A. I don't think it is true.

And also—

Dr. ARTHUR L. GAST called on behalf of the defendant, being duly sworn, testified as follows:

Examined by Judge NASH:

Q. Where do you reside?
A. Prospect, Marion county, Ohio.
Q. Did you know George E. Warren in his lifetime?
A. Yes, sir.
Q. What was his occupation?
A. A dealer in hay, I believe; and he also was in the clothing business when I first knew him.
Q. What business was he in in the latter part of his life, in March, 1893?
A. I believe it was the hay business; hay-packing.
Q. Where did he carry on that business?
A. His headquarters, I believe, were Prospect.
Q. Where did he live?
A. Prospect.
Q. You may state whether or not he came to you in the latter part of February, or the fore part of March, 1893, to treat him for some disease?
A, I believe so; yes, sir.
Q. What, if any statement, did he make to you as to his having been treated for that disease prior to his coming to your office?
A. To what disease do you have reference to?
Q. To a private disease; the disease he talked to you about in the latter part of February or the fore part of March, 1893?
45 A. Well, he talked to me about two or three troubles; there was indigestion for one and this private trouble; he told me that he had some little trouble with his penis.
Q. You may state whether or not he stated whether anybody had treated him before that for that disease?
A. Yes, sir; he did.

Mr. MARRIOTT: We want to object to the form of that question, because it assumes that he treated him for a disease. The answer was that he told him that he had something the matter with his penis. There isn't anybody as yet that has testified that it was a disease.

Q. You may give the statement which he made to you?

Question objected to by the plaintiff; objection overruled; exception by the plaintiff.

A. Well, I don't know; which time do you want, Judge?
Q. I have asked the question two or three times and brought you down to it. When he came to you in the latter part of February or the fore part of March, 1893, with that private disease, what statement did he make to you as to his having been treated by some one else, if anybody, for that trouble?

A. Well, he said he had gotten some medicine for a little trouble, and he said he was not getting along nicely and he wanted me to see——

Q. Did you give him something for it?

A. What trouble, the urethral trouble?

Q. Who did he say gave him the medicine?

A. He said some doctor in Marion; he did not give his name.

Q. What did he say as to the length of time he had been under treatment by the doctor in Marion?

A. He did not say.

Q. What date was it when he came to you?

46 A. I cannot tell you unless I refer to the books and I don't know then whether I can tell you exactly or not.

Q. Refresh your recollection from your books.

A. Now, did you say the latter part of February or the first of March?

Q. I put it in the alternative, the latter part of February or the first of March?

A. Well, he got medicine of me on the 26th of February and also on the 4th of March.

Q. Well, when was the first time he came to you with that trouble?

A. You will have to wait a little until I find out; I could not be positive, but I think it was the 6th of March; I know he got medicine at that time, but my book does not say what it is for.

Q. How long did you continue to attend him for that trouble?

A. Well, he would drop in occasionally for a week or ten days, probably; I did not give him medicine every time.

Q. You may state whether or not George E. Warren in your presence used a bougie or sound.

A. Well, he commenced to use a bougie.

Q. To what extent did he go with it?

A. He passed it probably an inch and a half into the urethra, and I told him to quit.

Q. You may state whether or not you directed him to use the instrument?

A. No, sir.

Q. Had you made an examination of him before the instrument was used?

A. I looked at the penis; yes, sir.

Q. Had you prescribed any medicine for him before the instrument was used?

A. No, sir.

Q. Now, describe fully, Doctor, what you found when you made that examination the trouble with the patient.

47 A. I found some swelling of the prepuce, or foreskin, an inflammation about the meatus, that is the opening into the penis or the mouth of the penis, a little irritation.

Q. Well, what else did you find?

A. That is about all.

Q. How much inflammation did you find there?

A. Well, I don't know how to describe it to tell you how much; there was some, not a great deal; some inflammation that I could not see; I could not describe it exactly as to the amount; I think it was an ordinary inflammation; that is what I considered it.

Q. For that trouble you treated him for a week or ten days, as I understand it?

A. Afterwards; yes, sir.

Q. You may state whether you treated George E. Warren for malarial fever in 1893 and in 1894?

A. I think I did; yes, sir.

Q. What time in 1893 and 1894?

A. I think it was the latter part of '93 and the first part of '94.

Q. For how long a period of time did you treat him?

A. Will you let me look at the book? I think I can tell you. Well, sir, it was probably three or three and one-half weeks; it might have been a little over, but about three and one-half weeks, I think.

Q. About three and one-half weeks?

A. Yes, sir.

Q. You may state at what time you treated him this three and one-half weeks.

A. From about the 15th of December to the middle of January, I think possibly that, or not quite so long probably; I could not tell you exactly.

Q. Now, I wish you would describe the symptons of this malarial fever; state whether or not there were any pains in the joints or bones during that period.

A. I don't remember whether he complained any of that or not

Q. How frequently did you visit him during the three and one-half weeks?

A. Sometimes once a day, sometimes twice.

48 Q. Daily during that period?

A. Yes, sir.

Q. Going back to March, 1893, state how the patient came to use that instrument at that time.

A. He said he was told to use it, that the doctor told him to use it.

Q. Well, why did he use it in your presence, if he stated?

A. He did not say why he used it; he said he wanted to use it; that is it, that he wanted to use it.

Q. Did your directions not to use it come before or after he made the attempt to use it?

A. After the attempt.

Cross-examination by Mr. MARRIOTT:

Q. You did tell him to quit and ordered him not to use it?

A. Yes, sir.

Q. Why, Doctor, what was the purpose in telling him not to use it?

A. He said it pained him very much when he used it.

Q. Just describe to the jury what sized sound that was that he was seeking to insert into the urethra?

A. Well, I don't remember the number of the bougie.
Q. Was it a large or a small one?
A. Well, it was quite large; that is above the medium size.
Q. I understood you to say that this trouble was an urethral trouble?
A. Yes, sir.
Q. That is all it was?
A. I considered it so; yes, sir.
Q. Do I understand you to say that the foreskin was inflamed?
A. Some; yes, sir.
Q. Such as you would find in a case of balanitis?
A. Well, I don't know as there was as much inflammation.
Q. As you would find in a complete case of balanitis?
A. No, sir.
Q. What is balanitis, Doctor?
—. Well, it is an inflammation of the head of the penis or prepuce, or the glands penis.
49 Q. That is the foreskin?
A. Yes, sir.
Q. So that it is an inflammation of the glands penis or head of the penis, or inflammation of the foreskin?
A. Yes, sir; a thickening.
Q. What you discovered there was an inflammation of the foreskin and a little inflammation at the opening of the penis?
A. Yes, sir.
Q. That is all there was of it, is it, Doctor?
A. As far as I could see.
Q. Now, you say that you saw him occasionally for some days, but I understood you to say you did not prescribe each time?
A. Yes, sir.
Q. When you did prescribe, I suppose you prescribed for this inflammation of the foreskin?
A. Yes, sir.
Q. I will ask you if the inflammation of the foreskin or if balanits is a serious affliction at all, or if it is constitutional in any manner, shape or form?
A. I think not.
Q. I will ask you, Doctor, if urethritis is a constitutional disease at all?
A. It is not; no, sir.
Q. You say some time in December, 1893, you treated him for malarial fever?
A. Yes, sir.
Q. Was he able to be around during any part of that time?
A. Not until his convalescent period.
Q. I will ask you whether he did thoroughly recover or completely recover?
A. Yes, sir.
Q. So that he was sound?
A. I considered him so.
Q. That was in December, '93?

A. December, '93, and January, '94.

Q. The latter part of the year '93, and the beginning of the year '94?

A. Yes, sir.

Q. He completely recovered and you considered him a sound man?

A. Yes, sir.

50 Redirect examination by Judge NASH:

Q. I want to call your attention to something that I forgot in chief. You may state whether or not in the latter part of November, 1892, and December 1st and 2d, 1892, you treated the patient for any disease?

A. Yes, sir.

Q. What was the disease?

A. Tonsil-itis, an inflammation of the tonsils—quinsy.

Q. How many calls did you make on him on the 2d of November?

A. I did not make any on him on the 2d of November.

Q. I mean the 30th of November?

A. I don't know how many.

Q. How many on December 1st?

A. Two.

Q. How many on December 2d?

A. One; I believe I did visit him twice on November 30th.

Q. You may state whether or not about the time you were treating the patient in the latter part of February and March, you treated him for any other disease than the private disease you mention.

A. That is at the time of the private disease you speak of?

Q. Yes, sir; shortly before or during that time?

A. I gave him some medicine for indigestion.

Q. What was the nature of the indigestion?

A. He claimed that the medicine he had taken had hurt his stomach and his food hurt his stomach.

Q. Well, was it anything like colic?

A. No, sir.

Q. When was this indigestion, before or after the treatment for the private disease?

A. I think it was during the time that I gave him some medicine.

Q. I wish you would describe that indigestion as nearly as you can.

A. Well, I don't know that I can; I did not pay particular attention except to give him something for the trouble.

51 Q. Well, what did he state to you the trouble was? How did he describe his pain?

A. He said he had a pain in his stomach after he would eat, and he told me that he thought it was due to the medicines he had been taking; that is the way I got at it.

Q. I wish you would look at your book for March 23d and 24th and say whether you treated George E. Warren at that time, and if so for what? I am speaking of 1893.

A. I have charges against him, yes, sir; but I don't remember what I gave him medicines for.

Recross-examination by Mr. MARRIOTT:

Q. You say you have charges but you don't know what you gave him the medicines for?

A. No, sir.

Q. You don't know that you gave him any medicines for himself? It might have been for his family, might it not?

A. It might have been.

Q. So that you don't know that you treated him at that time at all?

A. I cannot say positively.

Q. Now, I was going to ask you, Doctor, but I forgot it; I will ask you if gonorrhea, so called, will run itself out; if it will not run its own course and the patient recover from it without treatment?

A. Why, according to some authors, I believe it will run its course.

Q. I will ask you if there is any other positive way of determining whether a patient is suffering from the ailment known as gonorrhea except by a microscopic examination of the discharge?

A. No, sir; I think not.

Q. Is it not true that gonorrhea and urethritis are frequently mistaken one for the other?

A. Yes, sir.

Q. It is a very easy thing for a physician, unless he makes a microscopical examination, to diagnose urethritis as gonorrhea and the reverse?

A. I believe it is.

52 Q. I will ask you if urethritis is any more severe than a mere cold?

A. Well, it is according to the party that has it; some fellows say that they would just as lief have a bad cold and some say they would just as lief have urethritis as have a bad cold.

Counsel for defendant moved the court to exclude all of the answer commencing with the words "some fellows," which motion the court sustained.

And also:

Dr. JOHN B. SCHUELLER, called on behalf of the defendant, being first duly sworn, testified as follows:

Examined by Judge NASH:

Q. What is your name?

A. John B. Schueller.

Q. Where do you reside?

A. Columbus, Ohio.

Q. What is your business?

A. I am a practicing physician.

Q. How long have you been engaged in the practice of medicine?

A. Thirty-two years.

Q. Where did you receive your education as a physician?

A. My first term I took at Starling medical college, and then I went to Germany and studied three years at Wurtzburg, and graduated there, received my diploma there.

Q. You may state whether or not you have had any experience in regard to venereal diseases?

A. Yes, sir.

Q. And if so to what extent?

A. In many years' practice I have had quite a number of cases of venereal diseases. I did not make it a specialty—just in my general practice.

Q. Doctor, I wish you would state whether constitutional troubles arise or not from the disease known as gonorrhea?

A. Generally not, but in some cases they do.

53 Q. What are those difficulties that arise in some cases?

A. Well, of a mere local nature in the way of bubo, which is a swelling of the lymphatic glands in the groin, which become inflamed and gather and suppurate, and sometimes they have to be lanced; sometimes they disappear without being lanced. There also is another affection which affects the testicles, inflammation of the testicles, and furthermore is more constitutional, as sometimes you get pains in the joints similar to rheumatic pains, which indicates a constitutional affection, while the others are more local.

Q. Does rheumatism ever arise from that disease?

A. That is what it is called.

Q. You may state what experience you have had in life insurance as a medical examiner, if any.

A. I have been examining now for about 28 years.

Q. Whereabouts?

A. At Columbus.

Q. For what company?

A. Well, for the John Hancock, for the Home of New York, and the Germania of New York, and the Phœnix of Hartford, Connecticut; and there is one more I forget the name of—I will add the Metropolitan of New York; I forgot that.

Q. Doctor, if it should develop that an applicant had the disease known as gonorrhea, you may state whether or not that disease would be considered as material to the risk?

Question objected to by the plaintiff.

The COURT: Isn't that settled by the terms of the policy? I don't think it is competent now, and you may pass it for the present.

Q. Dr. Schueller, I show you a paper which is marked "Exhibit No. 1," for the purpose of identification, and I desire to ask you whose signature that is at the bottom right-hand corner on that paper?

A. My own.

54 Q. Whose signature is that at the bottom of the left-hand corner?

A. That is the signature of Mr. George E. Warren.

Q. You may state whether you saw Mr. Warren sign his name to that.

A. Yes, sir.

Q. You may state whether or not you read the questions that are contained in that paper to Mr. Warren before he signed the paper.

A. Yes, sir; I read all the questions to him.

Q. Who wrote down the answers?

A. I did.

Q. Did you write down the answers as he gave them to you?

A. Yes, sir.

Q. Doctor, suppose a patient came to you with an inflammation of the urethra, stating that several days before he had had connection with a lewd woman, would you regard it as necessary to make a microscopical examination to determine as to whether the trouble was one of gonorrhea or urethritis?

Question objected to by plaintiff.

The COURT: You may state whether it would be necessary or not.

A. I do not consider it necessary and I have never done it either.

Counsel for plaintiff moved the court to exclude the foregoing answer. Motion overruled.

Q. Well, in a case of that kind what would you say, as a medical man, the disease was on that state of facts?

Question objected to by plaintiff.

The COURT: As an expert on the state of facts given, he may answer.

A. I would call it a case of gonorrhea, commonly called clap.

55 The COURT: I think before you close your testimony—I am not prepared to say that the questions and answers made in this application, whether this witness should not be inquired of as to their materiality under this section of the statute—whether these are material questions and answers as affecting the risk. If it becomes necessary to ask those questions after the plaintiff has introduced his rebuttal, you may do so, but I do not mean to hold now that the court would exclude it.

Cross-examination by Mr. MARRIOTT:

Q. Doctor, if I understood your last answer to the question propounded by Judge Nash, it was that if a patient would come to you as a physician, with a little inflammation of the urethra, and would state to you that about a week before that he had had sexual inter-

course with a lewd woman, that you would pronounce that a case of gonorrhea?

A. It depends on the symptoms. If there was but a slight irritation present, and a very slight discharge of matter, I might hesitate to call it gonorrhea, but whenever the inflammation is considerable and the discharge quite copious, and furthermore if he stated that he had intercourse with an unclean woman, then I am positive it is a case of gonorrhea and nothing else.

Q. Do you mean by an unclean woman, if he would state that he had intercourse with a woman afflicted with gonorrhea? Suppose he don't state anything of the kind? Now, suppose he would come to you and show you his privates, what would you say, if there was a little inflammation and he would say: "Now I had intercourse with a woman?" What would you say upon that condition of affairs—that that was gonorrhea?

A. A physician always inquires about the cause which brought on the trouble. If it is a specific urethritis, commonly called
56 gonorrhea, if that is the case and this intercourse had taken place before—but if it is a plain case or a simple case of urethritis, brought on by any cause or irritant, then we inquire how did that come, and whether he was introducing an instrument into the urethra, or whether he had used strong medicines, for instance a Spanish fly or cantharides, which may set up inflammation or irritation of the urethra. The physician has to inquire about the cause.

Q. That is the reason I asked you the question if you were willing to let your answer go to this jury as to the cause of it; if a party would come to you and would say that he had a little inflammation of the urethra and would state in connection with that that he had had intercourse with a woman about a week before, you would not want to say then that that was gonorrhea, would you, without further information or further examination?

A. In my opinion, I will state it is a fact, according to my own experience as a physician; we will have a hundred cases of urethritis and all of them are gonorrhea—I say among a hundred maybe one would be a simple case of urethritis and the other ninety-nine *nine* are gonorrhea. That is my experience.

Q. Now, you see I was not asking you that, Doctor. Your experience may be different from that of a great many other physicians in that respect. I understood you to say that you were not a professional venereal physician and that you made no specialty of it? That is true, isn't it?

A. Yes, sir.

Q. You don't make any specialty of that nor lay any stress on it?

A. No, sir.

Q. Now, is it true then that the insertion of an instrument or a sound into the urethra will set up an inflammation, wouldn't it?

A. Not a sound, because it is smooth.

57 Q. It would be somewhat owing to the size of the sound, wouldn't it, Doctor?

A. If you would use a sound that was too large.

Q. It would be something owing to the condition of the sound in that case?

A. They are made of metal, steel or silver, and polished.

Q. And they should be made perfectly smooth?

A. Yes, sir.

Q. Now, to come back to the question, I ask you if it is not true that the insertion of a sound or a bougie, whatever you call it, into the urethra may set up an inflammation of the urethra?

A. I think that is rather exceptional.

Q. The question is, May it be so, Doctor?

A. I cannot answer that question positively, because I know of no case to that effect.

Q. I will ask you if the use of a sound by an unskilled person inserting it in the urethra would not set up inflam-ation.

A. It might by an unskilled person.

Q. I will ask you if a person himself undertakes to insert a sound into the urethra if there is not a great probability of producing inflammation there.

A. There is no great probability, because many do it.

Q. I did not ask you whether many did it or not; I asked you if there is any probability of his setting up inflammation.

A. There is a possibility of it, but not a probability.

Q. A physician would be better able to insert a sound than the man himself, wouldn't he?

A. Not always, because the patient in introducing the sound himself, he feels where the sound goes to or where the point of the sound goes to and whether it strikes against some part that it cannot pass through and he would be very careful in conducting the sound so that it will overcome that obstacle, while the physician, if he
58 does it, he does not feel that at once and the patient has to tell him that he hurts him.

Q. He is pretty apt to feel it when anybody inserts it, isn't he?

A. Well, I mean it becomes more painful and dangerous.

Q. Well, is it not sometimes painful and dangerous to insert a sound, especially if it is a very large sound?

A. It depends on the condition of the urethra.

Q. Answer the question.

A. I will. If the urethra is normal and it is introduced properly it will not give any pain.

Q. Suppose it is not introduced properly; then what do you say?

A. Then it may cause pain and irritation.

Q. It would depend then on how it is introduced?

A. Yes, sir.

Q. Now, I will ask you if it is not true that to diagnose a case of gonorrhea and for the physician to have positive knowledge that it is gonorrhea, is it not necessary to make an examination for bacilli?

A. It is but a few years that we know anything about the bacilli.

Q. I did not ask you how long it was that you knew anything about bacilli.

A. I just want to state——

Q. Doctor, answer my question.

A. To have absolute knowledge of it, it is necessary to make a microscopic examination.

Q. Now, Doctor, I want to ask you whether it is not true that it requires very careful and close examination to determine between a case of urethritis and gonorrhea.

A. It is often difficult to answer such a question in a few words. Common urethritis is plain inflammation, with a very small discharge, while gonorrhea, or urethritis caused by a specific germ which brings on gonorrhea, is more severe and the inflam-
59 mation and discharge is more copi-us and just by seeing the discharge and seeing how copious it is you can tell positively that it is a case of gonorrhea.

Q. Now, then, the discharge depends upon the extent of the inflammation, does it not?

A. Yes, sir.

Q. So that if the inflammation is extensive in a case of urethritis, it would be difficult to distinguish it from a case of gonorrhea, wouldn't it?

A. As I said before——

Q. Just answer the question I have asked you, Doctor, without any philosophy about it.

Question read.

A. In common urethritis, plain, simple——

Q. Just wait a minute, Doctor; I did not ask you that.

The COURT: The witness must answer the question in his own way.

Question read.

A. In a case of plain urethritis, commonly called catarrhal, where the discharge is not copious, it is always relatively small in quantity, while in gonorrhea urethritis, the discharge is copious and profuse. I mean running, as the common name is.

Q. I will ask you if in a case of urethritis, where the discharge is copious, whether then it would not be difficult to distinguish between gonorrhea and urethritis?

A. It would be difficult then, but I might say these cases almost never happen.

Q. Do you say that in a case of urethritis it never happens that the discharge is copious?

A. Not as copious as in gonorrhea.

Q. What do you mean by not as copious as in gonorrhea? First, I will ask you if it is not true that in a case of gonorrhea that there is stages, that is, severe gonorrhea and a mild form of gonorrhea, and in the mild form there is less discharge than in the severe form.

A. Yes, sir.

60 Q. Well, then, how will you distinguish between urethritis of the mild form and gonorrhea without a microscopic examination?

A. It would be difficult to distinguish between the two in such a case, except, as I said before, by a microscopic examination.

Q. After all, that is the only sure and positive test?

A. Yes, sir.

Q. Now, Doctor, you say that this paper which was shown you, marked "Exhibit No. 1," that you wrote the answers in it?

A. Yes, sir.

Q. That paper was an application made by George Warren to you as medical examiner of the John Hancock Mutual Life Insurance Company, on the 17th day of September, 1895, was it not?

A. Yes, sir.

Q. And upon that application the company issued a policy but that policy is not the one in suit, is it?

A. I don't know anything about that. After I made the examination I mailed it and that is all I have to do with it.

Q. Did you ever examine him after you made that examination?

A. Well, I examined him at that date.

Q. Doctor, I will go on and ask you something further; you made—as the medical examiner of the John Hancock Mutual Life Insurance Company you filled out that blank on the back, didn't you?

A. Yes, sir.

Q. In this application you state to your company, in answer to this question, "Has the applicant ever had syphilis, stricture or disease of the generative organs," you said "No"?

A. Yes, sir.

Q. In answer to this question, "Any eruptions on any part of the body," you said "No," didn't you?

A. Yes, sir.

Q. And in answer to question 12, "Is the respiratory murmur clear and distinct over every part of both lungs," you answered "Yes" to your company?

A. Yes, sir.

61 Q. And to the 17th question, "Has party ever had any severe illness or injury or undergone any surgical operation," you answered "No," didn't you?

A. Yes, sir.

Judge NASH: We object to those questions and answers. There isn't anything in these pleadings that involve the report of the medical examiner. It has not been offered in evidence, and that is not the paper to which I called the attention of the witness; it was the other side of the paper, and we have simply identified it.

No ruling.

Q. Now, in answer to question 18, "Is there any indication which leads you to suppose that the party has led or now leads other than a temperate life or that the present or past habits are or have been faulty in any respect," you answered "No," didn't you, to that?

A. Yes, sir.

Q. That was after you made the examination of the applicant, was it not, that you filled out this blank and forwarded it to the company?

A. In reference to some of the answers I have given—I had to rely on the statements of the applicant. That is what I mean.

Q. Now, I want to ask you why you answered that way when I haven't asked you that? You are the medical examiner today of this John Hancock Company?

A. Yes, sir.

Q. You have been its medical examiner for more than twenty years?

A. Yes, sir.

Q. You are interested with the company?

A. No, sir; not directly; I am their employé.

Q. You are in their employ?

A. Yes, sir.

Q. You are interested in the result of this suit, are you not?

A. No, sir; not in the result of this suit.

Q. Now, I will ask you if, in answer to question 19, "Is there apparent in the person examined any predisposition, either
62 hereditary or acquired, to any local or constitutional disease," you said "No" to that, didn't you?

A. Yes, sir.

Q. That was after you had examined him?

A. After I had examined him and after I had received his statement.

Q. I understand that.

A. And that is very important.

Q. I see you think that is very important. Now, in answer to question 23, "Do you find the party in perfect health and safely insurable," you answered "Yes," didn't you?

A. Yes, sir.

Q. That was after you examined him, was it not?

A. And after I received his statement.

Q. Answer my question; was that after you made your examination?

A. Will you permit me to state what my duties as medical examiner are? I don't like to be bulldozed.

Q. I am not bulldozing you. I am simply asking you for a fact. You answered that you found George E. Warren in perfect health and safely insurable? You answered it "Yes"?

A. Yes, sir.

Q. Then "Do you recommend that the policy issue?" you answered that "Yes"?

A. Yes, sir.

Q. Doctor, after you made that report and made that examination of George E. Warren, you never examined him further, did you?

A. No, sir.

Q. You did not examine him nor he did not appear before you when this policy, which was issued on the 27th of September, was issued at all?

Question objected to by defendant.

Q. I will ask you, when that application was made, which appears there, did you see George E. Warren at all (handing witness paper)?

63 Judge NASH: That is a document that has not been identified.

The COURT: He may answer the question as to whether, when that was signed, George E. Warren appeared and was examined by him. I will have to know something about it, of course, before it goes to the jury and for the purposes of identification he may answer that abstract question.

Q. Now, tell the jury whether or not George Warren appeared and was examined by you at the date of the application which you hold in your hand?

A. If it does not correspond with the date of the examination I made, then I have not seen him on that date; that is the only examination I made.

Q. Warren never appeared and was examined by you otherwise than upon this paper, did he, which you had shown you?

A. No, sir.

Q. Now, Doctor, when you examined George Warren on the 17th day of September, 1895, you did regard him sound and as a good risk, didn't you?

A. And by the investigation I could make and by his statements, and I always repeat that, I considered him a sound man.

Q. Did you see anything about him that would indicate to your mind at that time that he was not physically a sound man?

A. No, sir.

Q. Did you make an examination of his urin-?

A. I did.

Q. You analyzed it?

A. Yes, sir.

Q. And you gave him a careful examination, didn't you?

A. Yes, sir.

Q. And upon that examination made on the 17th day of September, 1895, you regarded George E. Warren as a sound man physically?

A. Yes, sir.

64 Q. I will ask you if you saw anything about George E. Warren at that time that would indicate to you, or to your mind, that he had the disease or ever had the disease known as syphilis?

A. He showed no symptoms of it.

Q. Did he show any symptoms of having ever had gonorrhea?

A. Not to my knowledge.

Redirect examination by Judge NASH:

Q. Doctor, upon what did you base your report to the company bearing date September 17th?

A. Well, on the answers or statements made by the applicant and on the physical examination I made of his body.

Q. You may state whether or not you had any knowledge in regard to any one or more of the answers given by Mr. Warren being untrue.

A. I had no knowledge at all, I presumed they were true.

Q. Had you, on the 17th of September, 1895, or afterwards, any knowledge of their being untrue?

A. After September 17th.

Q. On the 17th of September and afterwards?

A. Did I have any knowledge?

Q. Yes, sir; as to whether they were untrue or not?

A. That is direct knowledge by myself, do you mean—that I had examined him over again?

Q. Let me give you another question. Did you at the time this application was made by Warren, on the 17th of September, 1895, or did you prior to the time that policy was issued, know that any one or more of his answers in this paper marked "Exhibit No. 1" were untrue?

A. No, sir.

Q. I hand you, Doctor, the paper which is called "Medical examiner's report," which is marked for the purpose of identification, as "Exhibit No. 2;" I will ask you whether that is the re-
65 port from which Mr. Marriott was asking you questions in his cross-examination?

A. Yes, sir.

Recross-examination by Mr. MARRIOTT:

Q. Now, Doctor, one more question. Do I understand you to say that the report which you made as medical examiner to this company is based upon the answers given to you by the applicant for insurance?

A. Partly, yes sir.

Q. Didn't you make a physical examination yourself as a physician?

A. That is what I stated a few minutes ago.

Q. Answer my question, whether you did or did not?

A. It is based on the statements and answers of the applicant, and on the result of the physical examination of the applicant.

Q. Now answer my question whether you did make a physical examination of the applicant?

A. Yes, sir.

Q. Now, I will ask you if you sent that report to the company?

A. Yes, sir.

Q. And you made a physical examination of George E. Warren?

A. According to the examination stated there.

Q. Which gave his height, and his weight, and the expansion of his chest, and his pulse, and the condition of his lungs and heart, and an examination of his urin-?

A. Yes, sir; you will find it there.

Q. You did, then, make a physical examination of George E. Warren at the time he applied to you for this insurance?

A. Yes, sir.

Q. You say you examined his pulse and found his pulse smooth and regular, didn't you?

A. You will find it there in the examination.

66 Q. I am asking you what you found?

A. I may have forgotten it.

Q. Well, have you? What do you say as to whether you found his pulse full, smooth, and regular?

A. I cannot remember the exact words which I put down there; they are on the paper.

And also:

J. C. CAMPBELL, called on behalf of the defendant, being first duly sworn, testified as follows:

Examined by Judge NASH:

Q. What is your name?

A. J. C. Campbell.

Q. Where do you reside?

A. Columbus.

Q. What is your business?

A. I am State agent of the John Hancock Mutual Life Insurance Company.

Q. How long have you been occupying the position of State agent for the John Hancock Mutual Life Insurance Company?

A. I have been with the company for about 20 years; something like that.

Q. I desire to ask you whether or not the policy that was issued upon the life of George E. Warren in favor of William M. Warren, upon which this suit is based, passed through your agency?

A. Yes, sir.

Q. I call your attention to a paper which has been marked for the purpose of identification as "Exhibit 1," and I desire you to look at it and state whether or not on the 17th of September, 1895, when that paper is dated, or when the policy of insurance upon which this action is based, you knew that any of the answers made by George E. Warren, as represented in that paper, were untrue?

A. No, sir; I did not know anything of the kind.

Cross examination by Mr. MARRIOTT:

Q. Now, Mr. Campbell, as a matter of fact, the paper which

67 Judge Nash shows you, and which is dated the 17th day of September, is not the application upon which the policy in this suit was issued at all, is it? Just look at it?

A. Indirectly it is.

Q. Directly it is not?

A. Both directly and indirectly.

Q. Will you please look at the paper which I hand you, which is, for the purposes of identification, marked "Exhibit No. 3," and state whether or not that is not the application upon which the policy in suit was issued?

Question objected to by defendant; objection overruled; exception by defendant.

Q. Now, will you look at the paper which I hand you, which is the policy in suit in this case, and tell the jury what its number is?

Question objected to by defendant.

The COURT: That speaks for itself.

A. 41531 is the number of the policy.

Q. Now, will you look at this paper which Judge Nash handed you, which is marked "Exhibit No. 1," and say whose policy that calls for and what the number of the policy is?

Question objected to by defendant; objection overruled; exception by defendant.

A. This is 41361; that is the number here.

Q. 41361?

A. Yes, sir; that is the number of that.

Q. Now, will you look at the paper which I hand you, which is marked "Exhibit No. 4," and tell the jury what the number of that application is?

A. 41531 this reads.

Q. That is the same number that is on the policy in suit.

Question objected to by defendants; objection sustained.

68 Q. Now, Mr. Campbell, I will ask you if this application, which is marked "Exhibit No. 1," is not the application upon which policy No. 41361 was issued?

Question objected to by defendant; objection overruled; exception by defendant.

A. Both of the policies were issued on that.

Q. Your company issued two policies to George E. Warren?

A. Yes, sir.

Q. One dated on the 17th day of September, 1895, and that policy is the one which was issued upon this application handed you by Judge Nash, was it not, marked "Exhibit No. 1"?

Same objection; same ruling; same exception.

A. I don't know the date of that policy; I can't tell you.

Q. Now, what is the date of the application which is marked "Exhibit No. 4"?

Question objected to by defendant; objection sustained.

Q. I will ask you if the policy in suit, Mr. Campbell, was issued to George E. Warren until after that application which you hold in your hand, which is marked "Exhibit No. 4," was forwarded by you to the company?

A. This is not the application itself; it is the amendment.

Q. Whatever it is, was the policy in suit issued until after you sent that paper to the company?

Question objected to by defendant; objection overruled; exception by defendant.

A. The second policy was not issued until this amendment went in asking for a second policy based on the first examination.

69 Q. Now, will you tell the jury whether or not when that application was made by George E. Warren, whether there was any medical examination or any answers made other than what appears on that paper?

Questions objected to by defendant; objection overruled; exception by defendant.

A. In the hands of the company.

Q. I will ask you, Mr. Campbell, whether or not when the application was made to your company by George E. Warren, dated on the 27th of September, 1895, and upon which the policy in suit was issued, whether there was any medical examination or any answers made by George E. Warren other than appears in that paper?

Question objected to by defendant; objection overruled; exception by defendant.

A. I would like to understand your question. I would be glad to answer it if I understood it.

Q. Just look at the paper and answer whether there was any medical examination on the date of that application or whether there was any answers made by George E. Warren other than what appears on that paper?

Question objected to by defendant; objection overruled; exception by defendant.

A. The examination was already made.

Q. I did not ask you that it was already made on the 17th day of September for the policy which was numbered 41361, was it not, the policy issued on this application?

Question objected to by the defendant; objection overruled; exception by the defendant.

A. I will not say issued; he asked for another and there was an amendment based on his first examination.

70 Q. He did come back again after he had gotten the first policy and applied for a second policy of insurance?

A. Yes, sir; he signed an amendment asking for an additional policy.

Q. Then it is true after the first policy was issued George E. Warren applied for a second policy of $5,000, did he?

Question objected to by defendant; objection overruled; exception by defendant.

A. Yes, sir; he applied——

Q. And the paper which you hold in your hand, marked "Exhibit No. 4," is the paper which he signed at that time and is all the paper which he signed at that time, isn't it?

Same objection; same ruling; same exception.

A. There were two papers signed.

Q. Are those all the papers which George E. Warren signed on that date, at the time he applied for the second policy?

A. Those were the only papers, yes, sir, of that date.

Judge NASH: We wish it understood that all questions on this line are objected to by counsel for the defendant, and admitted subject to the exceptions of the defendant.

And thereupon an adjournment was had to Tuesday morning, January 26th, 1897, at 8.30 o'clock.

71 TUESDAY MORNING SESSION, *January* 26, 1897.

And also:

J. C. CAMPBELL, resuming the stand for further cross-examination, testified as follows:

Examined by Mr. MARRIOTT:

Q. Mr. Campbell, when you were examined yesterday, you were shown the paper marked "Exhibit No. 1." I will ask you if on demand made by the plaintiff in this case, if you did not furnish us with a paper, with the paper which I hold in my hand attached to it?

A. I don't think I did, sir.

Q. Will you please examine this paper, which, for the purposes of identification, may be marked "Exhibit No. 5," and tell the jury what it is?

A. This is an application.

Q. By whom—whose application?

A. George E. Warren.

Q. To whom?

A. To the John Hancock Mutual Life Insurance Company.

Q. For what?

A. It is the first application; it is really called the agent's sheet; it is known as the agent's sheet.

Q. For a policy of insurance?

A. Yes, sir.

Q. It reads: "Application is hereby made to the John Hancock Mutual Life Insurance Company for insurance on my life, on the twenty years' endowment plan, to the amount of $5,000.00, payable to my estate." Is that the paper which was signed by George E. Warren at the time he made the first application for insurance?

A. Well, I couldn't say whether it was the first or the second, really; I think it is the first, dating from the dates.

72 Q. Isn't it a fact, Mr. Campbell, that it is the first?

A. Well, I should think it was; I don't have the dates exactly in my mind.

Q. Please examine it and see if you know who detached that from the larger paper—I will ask you if that was not in the hands

of your company, and if this paper was not pinned to it, and if the pin marks are not there, and if it was not forwarded to you upon demand made by William M. Warren upon your company to produce it.

A. I don't know whether it was or not; I don't know whether this paper was sent to you through the office or whether it was sent to Judge Nash; I don't remember.

Q. I will ask you if you saw it before it was placed in my hands by Judge Nash two weeks ago?

A. No, sir.

Q. Did you see it after it came from the home office before it was delivered here?

A. I possibly did some months ago; I couldn't tell you the exact date, but I think I did see it.

Q. Where have these two papers been since the first policy, dated on the 17th day of September, 1895, and numbered 41361, since the date of the issuing of that policy, where has it been?

A. It has been in the company, on the files of the company in Boston, or it may have been sent to Judge Nash later.

Q. After this suit was brought?

A. Yes, sir; after suit was brought; I don't remember about that.

Q. Now, you say that you think you saw it a month or two ago?

A. Yes, sir; I think I saw this paper after the suit was filed; that is when it was brought to Judge Nash is when I first saw it.

Q. Tell the jury whether the paper marked "Exhibit No. 5," which you say is the application to the agent, was or was not pinned to the medical examination paper at that time.

73 A. I could not answer that; I don't remember; I just remember seeing the original in looking over them.

Judge NASH: I received that paper on Friday before this case was set for trial from the home office. At that time the two papers were pinned together and on two weeks ago yesterday, when the case was first set for trial, I handed those two papers to you. They were pinned together when I handed them to you and they remained in your hands until yesterday when you handed them back to me and I separated the papers. They may go on in the record.

Q. Now, Mr. Campbell, look at these papers and tell the jury whether or not the policy that was issued upon the strength of this second application is or is not the paper payable to George Warren's estate?

A. They were both issued on this examination.

Q. We will come to that further. Tell the jury whether or not the first policy, dated on the 17th day of September, was or was not payable to George E. Warren's estate and not to his father?

The COURT: Do counsel agree that the policy is payable to the estate?

Judge NASH: It is admitted. We agree that $5,000 at the end of 20 years, was payable to George E. Warren, and in case of his

decease prior to that time, payable to his administrators or executors.

Q. Now, Mr. Campbell, I will ask you to tell the jury how many applications were signed by George E. Warren at the time he applied for the first insurance, dated the 17th day of September?

A. One application issued of this kind.

Q. He signed that, did he?

A. Yes, sir; this is the one I would suppose from the date.

Q. It is in your handwriting?

A. No, sir.

74 Q. Mr. Wolfley's?

A. Yes, sir; he was the agent acting at that time; I think it is his handwriting.

Q. Now, will you take the paper which I now hand you, which for the purposes of identification is marked "Exhibit 4 A," and tell the jury what that is?

A. That is a request from Mr. George E. Warren to increase his insurance, an amendment to his application where he applied for $5,000. He came back and asked that it be increased to $10,000.

Q. What is that paper?

A. That is the request from George E. Warren that his insurance be increased $5,000.

Q. I will ask you if this paper don't read: "To the John Hancock Mutual Life Insurance Company of Boston. I hereby"——

Question objected to by defendant.

Q. Now, I will ask you if that paper is or is not the only paper which George E. Warren signed at the time the last policy was issued and the policy in suit?

A. This is the amendment he signed; yes, sir.

Q. Is that the only paper, Mr. Campbell, that he signed?

A. Yes, sir; that is all that was necessary.

Q. I did not ask you that, Mr. Campbell. That may be a question of law. Now, I will ask you when that paper was signed?

A. There are two here; this one belongs to it.

Q. The second one is marked "Exhibit 4 B" for the purposes of identification; what is that second one?

A. It is an agent's sheet, what we call an agent's sheet, showing how much insurance a man may want.

Q. Is it an application for $5,000 of insurance made by George E. Warren?

A. That is the agent's part of the application.

Q. Tell the jury then whether or not George E. Warren at

75 the time the policy in suit was issued signed any other papers than the two which you have in your hand?

The COURT: I think he answered that yesterday, but he may answer it again.

A. For the second policy, the policy in suit, those are the two papers Mr. Warren signed.

Q. Now, what did you do with those papers after they were signed—not the large one, just the two?

A. I don't know anything about that.

Q. Do you know who put that large one there?

A. No, sir; I suppose the office in Boston.

Q. What did you do with those two papers marked "Exhibits 4 A" and "4 B" after they were signed by George E. Warren?

A. I sent them to the company and referred to his examination.

Q. I did not ask you what you referred to; what did you do with them?

A. Sent them to the company.

Q. When did you receive them back from the company?

A. I don't think I received them at all; I had nothing to do with those after they were filed in Boston.

Q. They have never been in your possession since that time?

A. Some months ago, just as the other paper was there, I sent to Judge Nash something of that kind; I may have had that in my hand just a moment in sending them to him.

Judge NASH: I can make a statement showing the history of those papers if you wish it. They were received by me from the home office on Friday, the 9th day of January, and on the 11th day of January I brought them to Delaware in the same condition they are now and gave them to you. You retained them in that condition until yesterday when you handed them to me in the same condition you received them and they are in the same condition now.

76 Q. Now, Mr. Campbell, tell the jury whether you returned—was the policy returned to you from the company ever delivered?

A. Yes, sir.

Q. Tell the jury whether you returned either one of those papers or copies of them, those two papers, to George E. Warren with the policy, "Exhibits 4 A" and "4 B"?

Question objected to by defendant. Objection overruled. Exception by defendant.

A. Whether I sent a copy of those two papers? I don't understand.

The COURT: Those are "Exhibits 4 A" and "4 B"?

Mr. MARRIOTT: Yes, sir.

Q. Now, I will ask further if on the 29th day of February last, you received from the attorneys of Mr. Warren a written demand that you furnish the plaintiff copies of the application made by George E. Warren at the time of the issuing of this policy?

Judge NASH: If your honor please, we object to the question the way it is put. He may ask whether or not he received the paper upon that date.

Q. I will ask you if you received this letter, dated "Delaware, Ohio, February 29th, 1896. J. C. Campbell, State agent, Columbus,

Ohio. My dear sir: Will you be kind enough to furnish to us at your earliest convenience the copies of the applications made by George E. Warren for insurance, both accident and life, as taken by you at the time you insured him. Your compliance with this request will be greatly appreciated by ourselves. Sincerely yours, F. M. Marriott."

A. I hold a letter here that I received from F. M. Marriott, dated February 29th, 1896, asking for something.

Q. Is what I have read a correct copy?

Judge NASH: It is a correct copy.

77 Q. You did receive that letter in due course of mail?

A. I received this letter dated the 29th, which was answered on March 2d.

Q. I will ask you if you wrote the following letter: "Messrs. Marriott & Wickham, attorneys-at-law, Delaware, Ohio. Gentlemen"——

Judge NASH: I furnished those copies, Mr. Marriott, and I know they are correct.

Mr. MARRIOTT: Then it is agreed they are correct and we may read them.

Judge NASH: You may read them if they become competent.

The COURT: They may be considered as identified by the witness, and when you come to offer your testimony in evidence you may read them.

Judge NASH: This agreement applied to all letters. It is agreed that they are correct and neither side is required to produce technical proof of their identification.

Q. I will ask you if you or your company ever furnished Mr. Warren or his counsel with copies of the application made by George E. Warren at the time he applied for the policy in suit until the 19th day of this month when they were furnished us through Judge Nash?

A. I don't know whether we did or not; the letters will show what the correspondence was; I cannot remember that.

Q. You never furnished them, did you?

A. I think I answered some letters citing to them on the policy or something of that kind; I don't remember what it was.

Q. You wrote the company and they wrote you back that they would not furnish certain of the applications, didn't they?

Question objected to by the defendant.

78 Q. I will ask you then to come back to the question, did you ever comply with the request made for copies of those applications?

A. I sent the request to the company and they answered me that copies were attached to the policies; I think that is what the letters will show.

Q. Now, as a matter of fact, then the applications marked "4 A" and "4 B" were not attached to the policies, were they, nor the copies of the policies?

A. No, no; this is not "4 B."
Q. You say they were not?
A. I don't think that they were; I don't see how they could be.
Q. Mr. Campbell, did you get a summons or telegram to appear here this morning to produce certain papers?
A. Yes, sir; I got one as long as my arm last night collect.
Q. We will give you credit with it on the judgment we get against you.
A. I got it very late at night.
Q. That was evidently a mistake of the sheriff or the party who sent the dispatch and we will make that right later. Have you any papers that were called for by that summons?
A. I have a few papers with me; I got a telegram very late last night; in fact, it was quite late.
Q. Have you all the papers that were called for by that subpœna?
A. I could not possibly furnish the papers that was called for in the telegram because it asked me for letters that I had written.
Q. It asked you for copies of them, didn't it?
A. No, sir; even if it had I could not have furnished it; at the time I got the telegram, it was along towards midnight and I could not have furnished them by this morning.
Q. Will you produce such papers as you have which you have brought in answer to the subpœna?
A. I will show them to our attorneys.
79 Q. Mr. Campbell, the letters which you have produced, if I understand you, are the letters only from the company to you?
A. Yes, sir.
Q. Do I understand you to say that you have not produced any letters written by yourself to the company which refer to the policy in suit?
A. Yes, sir; I have no such letters; those letters are in Boston and you have copies of them though here.
Q. I will ask you the question whether or not the letters which Judge Nash—the copies of the letters which Judge Nash produced are all the letters written by you to your company which in any manner relate to the policy in suit.
A. Well, I could not answer that to be a fact; there may be some other letters speaking of the case just incidentally.
Q. That is the reason we sent the subpœna. Now, have you produced any others?
A. No, sir; I dodn't have access to them; they are in Boston.
Q. Do you mean to say that you did not keep letter-press copies?
A. I keep copies, yes, sir.
Q. Then you do have access to them?
A. The telegram told me to bring the letters.
Q. You knew what that meant, didn't you?
A. I would have had to get a dray to bring all my letter-press copy books here.
Q. Is that the only reason you did not bring them?

A. The telegram said to bring the letters and I supposed they had the letters that were sent.

Q. The telegram told you to bring the letters received by you from the company and letters by you—letters or telegrams sent by you to your company which referred to or in any manner related to the policy in suit?

A. Yes, sir; that is what it says.

Q. Now, you say that you did not bring the letter-press copies?

A. No, sir; I could not have found them and got them here by the hour court convened any way.

80 Q. Have you any one at your office to whom you could send for them and have them here?

A. I have five or six clerks, but they were in bed at that time.

Q. Today have you?

A. I have clerks there, but I don't know whether they could get them or not; I don't think they could.

Q. You don't think they could?

A. I don't think they could look them up.

Q. What time are you going to return home?

A. I want to get away just as quick as I can. There are no letters particularly that amount to anything.

Q. That is the reason I wanted to have them, to see whether we wanted them or not.

A. I don't know whether there are any letters but what you have copies of here.

Q. I will ask you if you haven't seen them and read them since this suit was brought.

A. No, sir.

Q. When the demand was made on you, didn't you go over your files?

A. These copies that I sent you there were all that I could see that pertained to this suit. There may have been some other letters sent to the company which referred to a newspaper article, but everything pertaining to this suit I think you have copies of.

Q. The only letters which you furnished are letters which refer to the demand made on you for copies of application, are they not?

(No reply.)

And also:

GEORGE W. WOLFLEY, called on behalf of the defendant, being duly sworn, testified as follows:

Examined by Judge NASH:

Q. What is your name?

A. George W. Wolfley.

Q. What is your business?

A. That of a life-insurance agent.

81 Q. What was your business in September, 1895?

A. A life-insurance agent.

Q. What company did you represent?
A. The John Hancock Mutual Life of Boston.
Q. You may state whether or not you took the application for insurance made by George E. Warren to the John Hancock Mutual Life Insurance Company in September, 1895.
A. I did, sir.
Q. I ask you to look at the paper which has been marked "Exhibit No. 1," for identification, signed by George E. Warren, applicant, and witnessed by J. B. Schueller, bearing date Columbus, Ohio, the 17th of September, 1895, and state whether or not at the time the policy was issued to George E. Warren you knew that any of the statements therein contained were untrue.
A. I did not.

Cross-examination by Mr. MARRIOTT:

Q. You don't know it yet, do you George?
A. Why, no.
Q. I want to ask you, Mr. Wolfley, if the paper which I hold in my hand, which is the application of George E. Warren for $5,000 insurance, dated the 27th day of September, 1895, was in possession of the company at all when the first policy was issued?
A. This application must have been in the hands of the company before we issued on it, this application for the first policy.
Q. That is the application for the second policy?
A. No, sir.
Q. I will ask you if this is not the application for the first policy and gives the number of the policy?
A. Yes, sir; that is right.
Q. Now, then, this one was not in existence when the first policy was issued, was it?
A. I suppose not.
82 Judge NASH: What was the date of the one you called attention to? One is September 17th and the other is the 27th.
Q. George, I will ask you if you attached these papers together before they were sent to the company?
A. No, sir; I never had anything to do with them.
Q. Did you have anything to do with the last application?
A. Simply to sign it is all and made it out.
Q. That application was made to you, was it?
A. No, sir; I was not in the office.
Q. Is that filled up by you?
A. Yes, sir.
Q. The writing in that application is in your hand, isn't it?
A. Yes, sir; a part of it.
Q. Any portion of it in anybody else but George Warren's?
A. That is his signature; I guess probably I filled it in and he signed as beneficiary.
Q. In that application his father is named as beneficiary?
A. Yes, sir.

Q. In the former application the policy is payable to his estate in case of his death?

A. I think so.

Q. Were there any other papers other than those two signed by George E. Warren upon which the policy in suit was issued on the 27th day of September?

A. I think not; it would not be necessary.

And also:

Dr. FRANK WELLS, called on behalf of the defendant, being duly sworn, testified as follows:

Examined by Mr. DAVIS:

Q. Where do you reside?

A. Boston, Mass.

Q. What is your profession?

A. Physician.

Q. What is your present occupation?

A. Medical director of the John Hancock Mutual Life Insurance Company of Boston.

83 Q. Where did you receive your medical education, Doctor?

A. At Hartford medical school and in Germany, England and France.

Q. Where did you practice your profession?

A. In Boston and in Cleveland, Ohio.

Q. What position did you occupy in Cleveland?

A. I was professor in Cleveland medical school and visiting physician and afterwards consulting physician to the Cleveland city hospital, and I was health officer of the city of Cleveland for two terms.

Q. How long have you been medical director of the John Hancock Life Insurance Company?

A. Fifteen years next March.

Q. State to the jury, Doctor, what are the duties of that position.

A. The duties of medical director in the John Hancock Company is to pass upon all the risks, all the applications for insurance submitted to the company that have been examined by the medical examiners throughout the country.

Q. You may state to the jury whether any policy is issued without the approval of the medical director made upon the medical examination.

A. No, sir.

Q. I will ask you to state upon what application policy No. 41531, issued to George E. Warren by your company on the 27th day of September, 1893, was based.

Question objected to by plaintiff.

The COURT: The policy shows and it is not necessary for the witness to testify. If it does not, then he may answer the question as to what application it was based upon.

Q. Well, I will waive that question. Referring to the medical examination and application—a copy of it is on the back of the policy—I will ask you to state whether you approved the issuing of this policy upon that examination.

Question objected to by plaintiff.

84 The COURT: Unless the record shows upon what medical examination or application the policy was issued, it is competent to show by a witness whether that fulfilled the requirements of the statute. You must first get the facts from the witness and then whether it comes up to the requirements of the law the court must determine. I think he can answer as to the medical examination upon which he approved as preliminary to the issuing of this policy by the company.

A. It is approved practically by myself; I see the initials of the acting medical director. He takes my place when I am absent. It is practically approved by the medical department.

Counsel for plaintiff moved the court to exclude the foregoing answer; motion sustained.

Q. You may state whether at the time of the approval of the application and the issuing of that policy the company had any knowledge of the falsity of any of the answers contained in the application.

Question objected to by the plaintiff for the reason that the witness cannot answer as to what knowledge any other member of the company had.

The COURT: I think that is the extent to which the witness may go, whether he had any knowledge of it.

To which ruling of the court the defendant excepted.

Q. What knowledge, if any, had you as to the falsity of any of the answers contained in the application referred to?

A. No knowledge.

The COURT: I submit to counsel that if the proof satisfies the jury that false answers have been made, that the burden of showing knowledge upon the part of the company is upon the other side.

That counsel may not be misled by what occurred on
85 yesterday, the court does not mean to be understood as excluding any testimony that you may see fit to offer that those questions and answers are material to determine the risk by the company.

Q. You may state to the jury, Doctor, whether or not all the questions asked in that application are material to the risk.

Question objected to by plaintiff.

The COURT: The witness upon the stand has qualified not only as a physician, but likewise in the matter of insurance. Now, if he were simply an expert in the matter as a physician and had no knowledge of insurance matters, then there might be something in

the suggestion of counsel that he should be asked as to the effect of certain physical conditions, but I know of no other method or better method of proving whether the statements made in the application for insurance are material and a determination of the question of insurance than the opinion of experts in both medical science and insurance. I therefore think this question is competent to put to the witness and exceptions may be noted for the plaintiff.

Exception by plaintiff to the ruling of the court.

Question read.

A. Yes, sir.

Q. Is it within your personal knowledge, Doctor, as to the principles or rules upon which policies are authorized to be issued upon a medical examination offered to your company?

A. Yes, sir.

Q. It is?

A. Yes, sir.

Q. State to the jury whether upon an examination in which it is stated that the applicant had had no disease at any time during the past ten years, except malarial fever of one week's duration,
86 whether that would be material in determining whether a policy should issue upon the application?

Question objected to by plaintiff; objection overruled; exception by plaintiff.

A. Yes, sir; I should consider that material.

Q. What is that answer?

A. I should consider that material.

Q. I will ask you to state whether if it should have been disclosed in answer to the questions propounded to the applicant upon the medical examination that he had been under treatment for diseases other than malarial fever at different times during the ten years preceding, sometimes for as much as a week or three weeks at a time, whether a policy would have been authorized?

Question objected to by plaintiff for the reason that the question assumes a state of facts which are not true and which have not been proven in the case, and secondly for the reason that it places it within the power of the company to come in and testify by their medical examiner to a state of facts which would defeat and prevent a recovery on any policy issued; objection overruled; exception by the plaintiff.

The COURT: You may note an exception to each of those questions without formally stopping, within the limit indicated by the court.

Question read.

A. It would depend, sir, upon the nature of the disease for which he was being treated, but the fact that he had been treated for a disease lasting the length of time you describe at about the same time would have cast a grave suspicion on the risk and we would have made a very careful and thorough investigation.

Q. If the answers in the application had disclosed that the
87 applicant was 31 years of age and that he had been afflicted during the period of ten years past with gonorrhea of more than average severity, accompanied by a slight inflammation of the bladder and a stricture of the urethra, would the policy have been authorized?

Question objected to by plaintiff.

The COURT: Do you mean within the ten years?

Q. We will change that to within ten years last preceding the application.

Question read as amended.

Question objected to by plaintiff; objection overruled; exception by plaintiff.

A. No, sir; I should not have approved the risk.

Q. You may state to the jury why.

Question objected to by plaintiff.

The COURT: I don't know that the reasons are material.

Mr. DAVIS: I simply ask the question; I did not want to lead the witness, but the language of the statute is "that the company was induced thereby and that otherwise they would not have made the risk." I want to inquire as to the risk or as to the hazard. I want to have him explain as to that.

The COURT: I think you may pass that.

This ruling was subsequently changed by the court and the witness was recalled and permitted to answer the question immediately after the afternoon recess.

Cross-examination by Mr. MARRIOTT:

Q. Doctor, I understood you to say that no policy would issue by your company without the medical examiner's report, without the party had been examined by your medical examiner and his
88 report made to the company?

A. If I remember, sir, the question was asked me whether any policy would be issued without the approval of the medical department. I may be mistaken, but that is my remembrance of the question.

Q. I will ask you if you did not state that no policy would be issued without a report from the medical examiner?

A. No, sir; no policy would be issued without a report from the medical examiner.

Q. Well, did you refer to the medical director? Do you refer to yourself or to the local medical examiner?

A. I refer to the local medical examiner.

Q. Now, I will ask you to look at this paper and say whether you approved as medical director, whether you approved that application?

A. Yes, sir.

Q. Now, will you please state whether or not, there is any examination by the local medical examiner at Columbus on those papers?

A. There has been a medical examination, sir, upon which this——

Q. Now, Doctor, wait a minute; I asked you whether there is any medical examination shown on the paper which I hand you?

A. No, sir.

Q. Now, I want to ask you if this paper was not approved by you ten days after you had approved the examination upon which the former policy had been issued.

A. Yes, sir; it is practically ten days; it is really eleven days.

Q. Then, Doctor, there was no medical examination of George E. Warren subsequent to the 17th day of September, which came to your company, was there?

A. No, sir.

Q. And upon that medical examination you approved the policy No. 413,601?

A. The application of the last date was approved upon the application made for the first policy to which Mr. Warren referred and signed his name as a basis for the new contract.

89 Q. Now, will you point out to the jury any place in that paper showing that the former application was made a part of the contract?

A. "And the said application and this amendment are to be taken as a whole and considered as a basis for this contract of insurance."

Q. Where does it say anything about any former application? Don't it refer to "said application"? Does it refer to the application anywhere of the 17th day of September?

A. Yes, sir.

Q. Read it.

A. "I hereby amend my application for life insurance made on the 17th day of September, 1895, and the said application and this amendment are to be taken as a whole and considered as a basis of the contract for insurance."

Q. Now, "said application;" I will ask you to tell the jury what that paper is?

A. That is the application upon which Mr. Warren applies for additional insurance.

Q. Does it say anything about additional insurance?

A. In which he applies for a policy of $5,000, and the amendment sets forth that he applied for an additional policy. "I hereby amend my application for life insurance made to your company on the 17th day of September, 1895, in the following particulars; and these amendments and declarations are to be taken and considered as a part of said application, and subject to the agreements therein contained, and the said application and these amendments, are to be taken as a whole and considered as the basis of the contract for insurance."

Q. Now, tell the jury whether that is not George E. Warren's application on the 17th?

A. That is the agent's application; here is the application to the

John Hancock Mutual Life Insurance Company of Boston. This is the application.

Q. That is the medical examiner's declaration?

90 A. That is the declaration made by the medical examiner; it is considered the application.

Q. Isn't that the application made by Warren to the company?

A. No, sir; this is the main application as it is considered by our company; application to the John Hancock Mutual Life Insurance Company.

Q. I will ask you if you regard gonorrhea as material to the risk of insurance?

A. Very much so; yes, sir.

Q. Why haven't you got it in this application? Why haven't you got it mentioned in the application as one of the things provided against?

A. Of course you can realize, sir——

Q. I did not ask you to argue the case; I asked you where it is in that application, if it is there?

A. The word gonorrhea does not appear here; we cannot have every disease known to the practice of medicine in the application.

Q. The word gonorrhea does not appear there; it nowhere appears in your application, does it?

A. Let me see it again, please; there is a question on the medical examiner's report, which says, "Has the applicant ever had syphilis, stricture or any disease of the generative organs."

Q. Is gonorrhea mentioned? I will ask you if you haven't mentioned about all the other diseases that human flesh is heir to but gonorrhea?

A. No, sir; there are a great many more.

Q. What you just read is on the medical examiner's report and not in the application signed by George Warren?

A. Yes, sir; that is a fact.

Q. I am asking you about the application for insurance of Mr. Warren; is there anything stated about gonorrhea in his answers?

A. No, sir.

91 Q. So far as you know, the applicant don't have anything to do with what the medical examiner reports? That is private, a private communication of the medical examiner to you, isn't it?

A. Yes, sir.

Q. Now, Doctor, I will ask you if all you have to do with the issuing of the policy is not to stamp your approval on the application and hand it over to the director or the president of the company?

A. No, sir; it is not all I have to do.

Q. Are you a director of the company?

A. No, sir; I am medical director.

Q. When you approve a policy you approve it upon the application and the answers to the local medical examiner?

A. Yes, sir; with consideration always for—considering always

what we call the agent's application; I have to take a general view of the whole picture.

Q. The agent's application don't say anything about any ailments in the man, does it?

A. No, sir; it does show, however, the amount of insurance for which he is asking and the amount of insurance he already has.

Q. There is no question of that kind in this case, as to the amount of insurance applied for?

A. You asked me whether all I had to do was to put my stamp on it.

Q. I meant by that to approve it; you approve the application; there are two applications, one to the company by the applicant, and one by the medical examiner, isn't there?

A. Yes, sir.

Q. Now, they come to you together, don't they?

A. Yes, sir.

Q. And you either approve or reject this application?

A. Yes, sir.

Q. The issuing of the policy after that is entirely with other officers of the company, isn't it?

92 A. With my company, after I have approved the risk the policy is issued.

Q. So that you have nothing to do with the issuing of the policy other than to approve the application?

A. I have nothing to do with the writing of the policy, but when I approve a risk it goes to the policy department and is written and signed by the proper officers and the policy issued.

Q. And that ends your work?

A. Yes, sir; but no action can be taken on that application until it has passed through my hands and I have rendered my decision.

Q. After you have rendered your decision then your duties are at an end?

A. Yes, sir.

Thereupon counsel for the defendant introduced and offered in evidence the paper heretofore marked for identification as "Exhibit No. 1;" to which counsel for the plaintiff objected, which objection the court overruled and to which ruling of the court the plaintiff excepted. And said paper is hereto attached, marked "Exhibit No. 1" and made part thereof.

And thereupon the defendant rested.

And be it further remembered that the plaintiff, further to maintain the issue on his part to be maintained, introduced and offered in evidence, in rebuttal, the following testimony, to wit:

Thereupon counsel for plaintiff introduced and offered in evidence, in rebuttal, the papers heretofore marked "Exhibit No. 4," together with the papers attached thereto, marked "Exhibits 4 A and 4 B;" to which counsel for the defendant objected, which objection the court overruled, and to which ruling of the court the

93 defendant excepted; and the same are hereto attached by copy, marked respectively "Exhibit No. 4," and "Exhibits 4 A and 4 B," and made parts hereof.

Mr. MARRIOTT: Now, we desire an agreement to go into the record as to the letters we have. Counsel agree that so far as our demand upon the company is concerned, for copies of the application made by Warren at the time he applied for this policy of insurance, they are contained in the letters which I hold in my hand and the correspondence which took place with reference to the furnishing of this application are contained in those letters and the same are marked "Exhibits Nos. 6 to 15," inclusive.

Judge NASH: We admit that those letters are true copies of the correspondence that took place, but when they are offered in evidence we desire to raise the question as to their competency.

The COURT: I don't know whether the court is called upon to determine at this stage of the case what papers under this section of the statute the company are required to furnish to the plaintiff or they be estopped denying the falsity of the answers, and I prefer very much not to pass upon that question until counsel have had an opportunity to be heard in argument of the case.

Mr. MARRIOTT: I would suggest that so far as the competency of the testimony is concerned that that question may be reserved for the court to pass upon under the suggestion of the court, and we simply offer the letters now and do not propose to read them. We simply formally offer them for the present.

The COURT: They may be considered as offered, and if the court permits them to go to the jury counsel for the defendant may have their exception to them, but if the court does not, the other side may have an exception to their exclusion. I think the rights
94 of everybody are preserved if the letters are formally offered now but not read until the court determines their competency, and they may be considered as formally offered.

Mr. MARRIOTT: Then we will offer in evidence.

The letter dated February 24th, 1896, addressed to J. C. Campbell, signed by Marriott & Wickham.

The letter addressed to the John Hancock Mutual Insurance Company, of date February 15th, 1896, signed by J. C. Campbell, State agent.

A letter of date February 15th, 1896, addressed to the John Hancock Mutual Insurance Company, signed by J. C. Campbell, State agent.

A letter dated Delaware, Ohio, February 29th, 1896, addressed to J. C. Campbell, State agent, and signed by F. M. Marriott.

A letter dated Columbus, Ohio, March 2d, 1896, addressed to Marriott & Wickham, attorneys-at-law, signed J. C. Campbell, State agent.

A letter dated Columbus, Ohio, March 2d, 1896, addressed to Samuel Wells, counsel, Boston, Mass., signed by J. C. Campbell, State agent.

A letter dated Delaware, Ohio, March 3d, 1896, addressed to J. C. Campbell, signed by F. M. Marriott.

A letter dated Columbus, Ohio, March 4th, 1896, addressed to Samuel Wells, counsel, Boston, Mass., signed by J. C. Campbell, State agent.

A letter dated Boston, March 4, 1896, addressed to J. C. Campbell, agent, Columbus, Ohio, signed by Roland O. Lamb, secretary.

A letter dated Columbus, Ohio, March 16th, 1896, addressed to Marriott & Wickham, attorneys-at-law, Delaware, Ohio, signed by J. C. Campbell, State agent.

A letter dated Boston, March 17th, 1896, addressed to J. C. Campbell, Columbus, Ohio, signed by R. O. Lamb, secretary.

95 Mr. MARRIOTT: Now, it is agreed that it goes into the record that the papers referred to in those letters and which are designated as applications were not furnished to the plaintiff for counsel until they were furnished by Judge Nash to counsel for plaintiff on the 19th day of the present month, two days before the case was assigned for trial.

Judge NASH: Mr. Marriott, I want to add to that. I will admit that statement to be true unless the copy attached to the policy which was in your possession was a copy of the papers required in the notice.

Mr. MARRIOTT: That is all right.

The COURT: The questions and answers on the back of the policy were in your possession from the time the policy was delivered to you.

Mr. MARRIOTT: It is conceded that the answers which are on the back of the policy were on it at the time it was delivered, but the question as to whether they were the answers made by Mr. Warren is another thing.

Judge NASH: We want to save an exception to the admissibility of these various papers.

The COURT: If they finally go to the jury and are read, then you may have your exception.

And also:

Dr. W. F. CRICKARD, called on behalf of the defendant, being first duly sworn, testified as follows:

Examined by Mr. JONES:

Q. What is your given name?

A. W. F.

Q. What is your occupation?

A. Physician.

Q. How long have you been engaged in the practice of medicine?

A. Seventeen years.

Q. Of what school are you a graduate. Doctor?

A. The Cincinnati College of Medicine and Surgery.

96 Q. Have you in your practice had any experience and has your attention been directed to the question of gonorrhea, Doctor?

A. Yes, sir; several times.

Q. What is the character of the disease? Is it a local affection, or is it a constitutional disease?

A. Purely local.

Q. What is your opinion, Doctor, as to whether or not it can be cured readily?

A. It can be cured, yes, sir; quite readily.

Q. What do you say as to whether or not if a person takes care of himself it will run its own course and run out?

A. It is a self-limiting disease.

Q. Explain to the jury what you mean by a self-limiting disease.

A. The disease runs a certain course and gets well itself in a general way.

Q. What do you say, Doctor, as to whether gonorrhea impairs the general health or shortens life?

A. It is not inimical to the length of life at all; it is not considered so.

Q. Is it regarded as a local disease or constitutional?

A. It is purely a localized affection.

Q. What do you say as to whether it is a temporary disorder?

A. Since it is a self-limiting disease, it must be temporary in its character.

Q. What do you say as to whether or not it weakens the general constitution and shortens life?

A. It has no tendency to shorten life.

Q. Doctor, how long would it take to develop a case of gonorrhea? Suppose a man had had improper relations with a person, how long would it take to develop itself?

A. It might develop anywhere from 36 hours to 10 days.

Q. Now, Doctor, take a case of gonorrhea; suppose a man had had improper relations with a woman, say four or five days
97 preceding the time you would see the case, and suppose there was a profuse discharge from the urethra, what would you say as to whether in such case it was possible for a man to have a stricture that soon?

A. As we understand stricture, it would be a physical impossibility to have what is known as a stricture at that time.

Q. How long would it probably be before the stricture would appear? How long would it probably be before the stricture would follow, if it did follow?

A. Well, it would require the substance of acute inflammation to occasion a stricture, what we denominate a stricture; the time might vary from several months to a longer time; there is no set time.

Q. Would it be possible for a stricture to develop itself say within a week after a physician had seen a patient; say he had been exposed four or five days before, would it be possible for it to develop within a week after that, especially if there was a slight discharge? Would it be possible that there would be a stricture?

A. Not an organic stricture, no sir; it would be impossible.

Q. Now, Doctor, in this disease of gonorrhea, are there other diseases, say urethritis or balanitis, that would be indistinguishable from gonorrhea? That is, I mean to the casual observer, without an analytical examination or a microscopic examination?

A. Well, balanitis should not be mistaken for that; I don't think that a mistake would be possible, but you might have non-specific urethritis with some discharge that might be mistaken.

Q. And it would be difficult to tell it from actual gonorrhea?

A. Yes, sir.

Q. I will ask you if this inflammation of the urethra, or
98 urethritis, if it does not result frequently from mere amorous inclinations, ungratified amorous inclinations?

A. Such a thing might develop it.

Q. I will ask you if it is possible for that to occur from sexual hygiene—I mean intercourse with a woman who might have leucor-hœa?

A. Do you mean the specific form?

Q. I mean whether inflammation might not result from that and produce urethritis, which is an inflammation of the urethra? Might that not result from a man having sexual hygiene—I believe that is the word—with a woman that was not affected with gonorrhea but simply with leucor-hœa?

A. Yes, sir.

Q. I will ask you whether that might not occur from a person having sexual hygiene with a woman immediately preceding or immediately after menstruation, and if it might not come from the poison of the menstrual blood?

A. Yes, sir.

Q. I will ask you further also this, whether urethritis is not produced by acid in the urin-?

A. Yes, sir; that may produce it; that is the very frequent cause of non-specific urethritis.

Q. Is it not a well-recognized fact among the medical profession and among medical authors that the sources from which it may be acquired are infinite, and don't they use that expression in the books?

A. Yes, sir.

Q. In cases of this inflammation and gonorrhea, it is sometimes difficult to determine to what class it belongs without a microscopical examination?

A. Yes, sir.

Q. Now, by a microscopic examination you can detect then, what we call the gonococchi?

A. Yes, sir.

Q. That would determine which it was?

A. Yes, sir.

Q. I will ask you whether you have been medical examiner for life insurance companies?

A. Yes, sir.

99 Q. How long, Doctor?

A. I am not now, but I have been years ago. I was examiner for several years.

Q. Doctor, take a case of a man where he had had gonorrhea and had got over it so he was well, I will ask you whether or not you

would regard the fact that he had had gonorrhea, a simple case of gonorrhea, as a fact material to the risk in a case of life insurance?

A. Not in the least particular.

Q. I will ask you whether it would be regarded generally as being a material question affecting the risk in procuring life insurance?

A. It is not so considered by the authorities.

Counsel for defendant moved the court to exclude the foregoing answer; motion overruled; exception by defendant.

Q. Doctor, suppose that a man has had malarial fever and has recovered from that, would the question of the length of time, as to whether it had been a week or two or three days or ten days or three weeks, be a material question that would affect materially the risk of the life insurance company?

Question objected to by defendant; objection overruled; exception by defendant.

A. I would not so regard it.

Cross-examination by Judge NASH:

Q. Doctor, if a patient should appear before you who was suffering from a stricture and at the same time was suffering from gonorrhea, what would be your conclusion as to which disease had existed longest, the gonorrhea or the stricture?

A. Well, the only way I could arrive at a conclusion with reference to that matter would be to cure him of the gonorrhea and then discover whether he had a stricture or not following that.

100 Q. Could you cure the inflammation of the gonorrhea entirely if the stricture existed?

A. If there was stricture existing there would be a slight specific irritation of the urethra following the disappearance of the specific form of urethritis that would denote something more than the usual character, and an examination following that would determine whether there was a stricture or not.

Q. Suppose a patient should appear before you suffering from a stricture and also with gonorrhea, and informed you that the gonorrhea was caused by intercourse that had occurred two or three days before; would that indicate that the stricture was something that existed before the gonorrhea?

A. Well, I would simply have the patient's word for the stricture, since in the acute inflammation and the condition of the urethra it would be impossible by ordinary methods to determine whether the stricture existed or not, and I would only have his word for that until the specific form of inflammation had subsided.

Q. Doctor, you stated, as I understood you, in your examination-in-chief, that urethritis might be mistaken for gonorrhea; is it a difficult thing for a competent medical practitioner ordinarily to tell the difference between gonorrhea and urethritis?

A. Well, urethritis is a term which is generic, covering all the ground. There is urethritis specific and non-specific; we make

that distinction and it might require a very close examination, if that is what you mean by the question, whether it would be easily determined whether it was specific or non-specific.

Q. Well, isn't urethritis sometimes called gonorrhea?

A. Yes, sir; it may be.

Q. Isn't it the same thing, sometimes?

A. Yes, sir; it comes under the head of urethritis of the
101 specific character. As I said a moment ago, urethritis is generic and it may be specific or non-specific.

Q. Isn't gonorrhea sometimes attended by what is sometimes called bubo?

A. Yes, sir; it may be.

Q. Well, isn't gonorrhea sometimes attended by rheumatism in an acute case?

A. Gonorrhea rheumatism is one of the later sequela.

Q. When gonorrhea is attended by bubo, isn't it a more dangerous disease than it is in some of the other forms?

A. Well, I have never seen any particular danger arising from non-specific bubo purely localized, never getting beyond the urinal glands.

Q. Doesn't gonorrhea sometimes implicate the bladder?

A. Yes, sir.

Q. Well, now, don't such conditions as bubo and rheumatism attending gonorrhea, don't such conditions sometimes seriously affect the health and shorten the life of the patient?

A. While it may cause a great deal of inconvenience, I have never known of a case on authority where it is claimed that life was shortened by it in any way. There isn't anything constitutional about it, purely localized; while it may give a great deal of stress and trouble and suffering temporarily, it has no tendency whatever to shorten life.

Q. If a patient should come to you with a profuse discharge from the penis, with febrile symptoms, and state that he had recent connection with a lewd woman, would you not as a physician upon that statement, with those facts before you, reach the conclusion that the disease was gonorrhea?

A. Yes, sir.

By Mr. JONES:

Q. I will ask you whether upon that line you might not be mistaken about it also? Might you not be mistaken even if the patient had told you that? You still might be mistaken about that as to whether it was or was not?

A. Certainly.

Thereupon a recess was had to 1.00 o'clock p. m. of same day, Tuesday, January 26th, 1897.

102 TUESDAY AFTERNOON SESSION, *Jan.* 26, 1896.

The COURT: In the examination of Dr. Wells before the recess, after he had been inquired of as to the materiality of the questions

in the application, he was asked the question as to whether he regarded them as material, and I think he ought now to be permitted to answer that question, as to whether he regarded those questions and answers material to the risk, and if counsel for the defendant desire to put the question now they may do so. Otherwise, the the court will not feel like noting an exception for the defendant.

And thereupon—

Dr. FRANK WELLS was recalled by the defendant for further examination-in-chief and testified as follows:

Examined by Mr. DAVIS:

At this point, before taking up the further examination of the witness, part of the former evidence of said witness was read as follows:

Q. If the answers in the application had disclosed that the applicant was 31 years of age and that he had been afflicted during the period of ten years past with gonorrhea of more than average severity, accompanied by a slight inflammation of the bladder and a stricture of the urethra, would the policy have been authorized?

Question objected to by plaintiff.

The COURT: Do you mean within the ten years?

Q. We will change that to within ten years last preceding the application.

Question read as amended.

Question objected to by plaintiff. Objection overruled. Exception by plaintiff.

A. No, sir; I should not have approved the risk.

103 Q. You may state to the jury why?

Question objected to by plaintiff.

Mr. DAVIS: I will put the question again.

Q. You may state to the jury why?

A. Because this disease would create not only a physical hazard but a moral hazard.

Q. You may state in what way it would create a physical hazard?

A. Take the gonorrhea attended by a stricture and the inflammation of the bladder, it might produce a condition which would lead to an impairment of health which would affect the longevity. The ground to be taken in this case, however, is more on account of the moral hazard which is a well-recognized principle in life insurance. There are certain conditions which we call a moral hazard——

The COURT: Just answer the question.

Q. I will ask the witness to state what he means by the term "moral hazard" or "moral risk"?

Mr. MARRIOTT: We want it understood that these questions and answers are all objected to and exceptions noted by the plaintiff.

The COURT: Let it be so understood.

—. There are certain conditions of life which may apparently at the time of affecting the insurance have but little influence upon the risk, but there are conditions surrounding the applicant which might in the future and would create a condition very inimical to the risk. I think I can best illustrate that by particular examples——

Witness stopped by objection of plaintiff; objection sustained.

Q. If it appeared to the insurance company that the applicant had gonorrhea and was a married man, would that create such a condition as would increase the moral risk?

A. Decidedly so; yes, sir.

104 Counsel for plaintiff moved the court to exclude the foregoing answer; motion overruled; exception by plaintiff.

Recross-examination by Mr. MARRIOTT:

Q. Doctor, if it should appear to the company that the applicant had had gonorrhea and was not accompanied with the other circumstances of the inflammation of the bladder or strictures, would you then issue the policy?

A. May I ask you, sir, whether you refer to the general question or to this particular case?

(Question read.)

A. No, sir.

Q. Now, I will ask you, Doctor, if it is not a fact that your company has issued policies where the applicant has answered that he had gonorrhea?

A. Yes, sir.

And also:

Dr. E. H. HYATT, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Examined by Mr. JONES:

Q. What is your business?

A. Practicing physician and surgeon.

Q. How long have you been engaged in the practice, Doctor?

A. Over forty years.

Q. Of what school of medicine are you, Doctor?

A. Regular.

Q. Have you been identified with any of the medical colleges in the State, and if so, for how long?

A. I have been identified with the Columbus medical college about twenty years, as one of the teachers.

Q. You were one of the professors of that college for a long time?

A. Yes, sir.

Q. I will ask you to state to the jury what is gonorrhea; what is the character of it?

A. Do you want to know the symptoms?

105 Q. No, I think I want to know whether it is a temporary disease; you may state generally to the jury what it is.

A. It is believed to be and I believe it to be a local disease, entirely so.

Q. What do you say as to whether or not it will run its course and cure itself?

A. I believe it to be a self-limiting disease, and with cleanliness and care it will cure itself.

Q. What do you say to the jury as to whether or not where a person has had gonorrhea and got over it whether or not that would materially increase the risk; whether it would increase materially the risk of life insurance and whether it would be a material matter?

A. I can see no reason why it should or would invade the constitution or impair the general health.

Q. It would not impair the general health?

A. No, sir.

Q. I will ask you whether or not then, what would you say as to whether or not if a man had had it whether that would be a matter material to the risk after he had got over it?

A. I never take it into account in recommending a case myself.

Q. How long were you a medical examiner for a life insurance company yourself, Doctor?

A. Well, at different times with different companies; as far back as twenty-five years, perhaps; I don't know just how long.

Q. Doctor, take a case where a man has had malarial fever, if he had had malarial fever and recovered from it, would it make any difference in the materiality of the risk of life insurance in case such sickness lasted one week or ten days, or would the difference in time of six days or three weeks, for instance, would that make any material difference in the risk in a life-insurance case?

A. That is the opinion of the profession, as it is my opinion now, as a rule they make complete recovery from malarial disease, or malarial fever, so called.

106 Q. If they make complete recovery, I will ask you if there had been a recovery, whether it would materially increase the risk and would it be a matter to be considered in determining the materiality of the risk?

A. I think not.

Q. This trouble, Doctor, that is called gonorrhea, has somewhat the resemblance of other diseases of the urethra, hasn't it—I mean so far as general appearances are concerned?

A. Yes, sir.

Q. I will ask you whether or not it is easy to distinguish a case of gonorrhea from a case of so-called balanitas or urethritis that might be acquired from other causes other than from improper sexual relations.

A. There is always urethritis in gonorrhea, and we may have urethritis from other causes; it is very difficult to distinguish as to the cause.

Q. I will ask you whether or not this urethritis may or may not

be produced by sexual relations with a woman when she has leucor-hœa and not in fact gonorrhea at all.

A. Undoubtedly so.

Q. How is it as to relations with a woman immediately preceding or immediately after the menstrual flow, whether it might be produced in that way?

A. Secretions after the flow is more likely to produce it than anterior copulation, and does often produce it.

Q. How is it as to whether or not this inflammation may also be produced from acid in the urine?

A. Acid of the urine may cause an irritation, and we learn from the books that there are an infinite number of ways by which urethritis may be acquired other than by what we call lewd intercourse. There are a great many cases of what we call traumatic injuries which bring on urethritis.

Q. Now, Doctor, I will ask you whether it would be possi-
107 ble for a stricture to occur where a man had had improper relations with a woman, say four or five days preceding the time he should visit a physician and the physician should find it flowing or an exudation of this pus or whatever it is from the urethra, whether it would be possible for a stricture to develop within that time.

A. No, sir; it would not.

Q. I will ask you whether or not within eight or ten days subsequent to the time the doctor had examined him whether it would be possible for a stricture to develop?

A. The stricture develops usually during the healing of the sore, as it is commonly called, and it might occur months afterwards.

Q. I will ask you whether or not it might not sometimes occur from improper use of what they call a sound?

A. Yes, sir; the using of a bougie roughly will certainly produce a stricture.

Q. I will ask you, Doctor, if a married man had gonorrhea would it be possible for him to have sexual relations with his wife without giving it to her also; would or would not he be likely to communicate it to her in the marital relations, if he had had it?

A. If he had gonorrhea and a discharge and had copulated with his wife or any other woman he would most undoubtedly communicate the disease.

Q. Suppose for instance that a man had had some trouble or other—that is, notwithstanding he has regular social relations or marital relations with his wife, sexual intercourse, and she did not take anything of that kind, what would you say as to whether a man had gonorrhea at all or not?

A. The evidence would be negative there.

Q. And from that negative evidence what would be your medical opinion as to whether he did have it or not?

A. I would say he did not have it; that is, I mean gonorrhea.

108 Q. Would he have in your opinion something resembling

gonorrhea; urethritis or some of these other things that come from other cases?

A. Yes, sir; urethritis or some other disease.

Cross-examination by Mr. DAVIS:

Q. When you spoke about being an examiner for an insurance company did you mean as medical director or local examiner?

A. Local examiner.

And also:

JOHN HASKETT, called as a witness on behalf of the plaintiff being first duly sworn, testified as follows:

Examined by Mr. MARRIOTT:

Q. What is your name?

A. John Haskett.

Q. Where are you living now?

A. At Fort Wayne.

Q. Where were you living during the year 1892-'3-'4, and '5?

A. At Prospect, Ohio.

Q. Were you acquainted with George E. Warren in his lifetime?

A. Yes, sir.

Q. Had you any business relations with him that put you in his company?

A. Why, I had business with him; I worked with him about four years and a half.

Q. Did you work with him in the hay business?

A. Yes, sir.

Q. Do you remember the time that he was sick with malarial fever?

A. I remember the time he was sick; I was his nurse.

Q. I was going to ask you whether or not you took care of him during that sickness?

A. Yes, sir; I was the only nurse he ever had during his sickness.

Q. Now, be kind enough to tell the jury how long George was sick at that time and confined to his bed?

A. I was his nurse for seven nights.

109 Q. Now, after that tell the jury what his condition was, whether or not he was confined to his bed or remained about the house.

A. He was setting up and in and about the house.

Q. He remained about the house?

A. Yes, sir; for probably three or four days afterwards.

Q. You say you were the only nurse he had?

A. I was the only nurse he ever had that I know of during that time.

Q. Will you be kind enough to tell the jury what your duties were there in nursing him?

A. My duties were to take care of him and to give him his medicine and bathe him once each night.

Q. Did you bathe him once each night?

A. Yes, sir.

Q. Would you bathe him all over his body or person?

A. Yes, sir; I first took his night-gown off and bathed his chest, and then buttoned it up and then bathed from there down.

Q. Did you bathe him about his privates?

A. Yes, sir.

Q. Will you tell the jury whether or not during that time you discovered anything the matter with his private-?

A. No, sir; I never saw a thing; nothing at all; I never saw a mark on him.

Q. Was there anything the matter with his privates at that time so far as you knew?

A. Not that I knew; his urine passed all right and everything was all right, and I held the chamber for him in the bed.

Q. I was going to ask you about that; you say you held the chamber when he would urinate?

A. Yes, sir.

Q. How frequently did you do that?

A. Probably twice a night.

Q. Now, tell the jury whether you ever observed any obstruction or difficulty in his passing urine?

110 A. I never saw anything pass through his urine only what was natural and easy.

Q. Was there any complaint?

A. No complaint; no strain whatever.

Q. Now, then, John, when you got to working for George how long after that did you continue to work for him?

A. I could not state the time that he was sick, but I worked for him——

Q. Assuming that that was in December, '93, how long after that did you remain with him?

A. I remained with him until 1895, in May I left him.

Q. Tell the jury whether you was with him more or less from the time he had malarial fever up until the time——

A. Yes, sir; I was with him; of course there would be weeks that I would not see him.

Q. What do you mean by that; one week or two weeks?

A. Sometimes maybe two or three weeks, for two or three weeks I would not see him while I was in his employ.

Q. You were with him?

A. Yes, sir; often.

Q. Tell the jury whether he was ever sick after that sickness.

A. Not that I know of; that is, never confined to his bed.

Q. Tell the jury whether so far as you know or observed he was a well and sound man after he recovered from the malarial fever?

A. He was, as far as I know.

Cross-examination by Judge NASH:

Q. When was it that Warren had this attack of malarial fever?

A. Well, I could not state exactly the year; it was along in the winter: I don't know what year it was in.

Q. Was it in the latter part of December, 1893, or the fore part of January, 1894?

A. Well, it was not during the holidays.

111 Q. You say it was not?

A. No, sir; it was not during the holidays; not during the month of December and January; it was not during the holidays; I was there only seven nights. His lodge hired the nurse.

Q. When?

A. I was hired as his nurse and I was paid for seven nights only.

Q. If his attending physician said that the attack of malarial fever continued or occurred in the latter part of December and in the fore part of January, might you not be mistaken as to this not being during the holidays?

A. They might have treated him when he hadn't any nurse. I know I nursed him during that time.

Q. You are only speaking of the time when he needed a nurse?

A. I am only speaking of the time when he needed a nurse, and I was his nurse for seven nights.

Q. How many times did you state it was necessary for him to urinate during the night?

A. Oh, twice a night; probably at nine o'clock and at two or three o'clock in the morning. During the daytime I slept upstairs and I did not know anything about it during the daytime.

Q. Who was his family physician?

A. Dr. Gast was his family physician at that time.

Q. Was Dr. Gast his physician prior to the time he had this attack of malarial fever?

A. Why, no; I could not say as to that, because his wife when she was sick she would call sometimes Dr. Lunger and sometimes Dr. Gast and sometimes Dr. Glidden, when he would take sick and feel a little bad, his wife would call them. I could not say as to that; I don't know anything of that; I never asked about it.

Q. Don't you know that frequently during the year preceding the time he took the malarial fever that he procured medi-

112 cines from Dr. Gast and brought them to his home?

A. No, sir; I never knew that.

Q. Didn't he during that time bring medicines home for himself from Dr. Gast and take the medicines himself?

A. No, sir; I never knew Warren to take medicine only during that time.

Q. You may state whether you knew of his bringing medicines from Dr. Gast's for yourself.

A. Well, I don't see as you have anything to call in on that; I never received no medicine from him, as I said before.

Q. Did you during that year receive any medicines from Dr. Gast for yourself which Warren paid for?
A. No, sir.

Redirect examination by Mr. MARRIOTT:

Q. Do I understand you to say his wife was ill frequently and that he called Dr. Gast and other physicians?
A. Yes, sir.
Q. What lodge was this that you spoke of hiring a nurse?
A. Knights of Pythias.

And also:

Dr. J. S. LUNGER, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Examined by Mr. MARRIOTT:

Q. What is your name, Doctor?
A. J. S. Lunger.
Q. What is your profession?
A. A physician.
Q. How long have you been practicing medicine?
A. Six years.
Q. Where are you located?
A. Prospect, Ohio.
Q. Have you been located at Prospect, Ohio, since you began the practice of medicine?
A. Yes, sir.
Q. Do you Mrs. George Warren?
A. Yes, sir.
Q. Tell the jury whether or not you treated George Warren's wife, and if so when and during what time?
113 A. I was their family physician since 1892; I began in 1892.
Q. Did you see her, say in the month of March, 1893?
A. Yes, sir.
Q. Professionally?
A. Yes, sir.
Q. And you had seen her before that?
A. Yes, sir.
Q. Professionally?
A. Yes, sir.
Q. I will ask you if you treated her locally at the time you was her family physician.
A. Yes, sir.
Q. How long did you continue to treat her in that way?
A. I treated her up to the death of Mr. Warren.
Q. Tell the jury whether or not she ever had gonorrhea.
A. She never did.
Q. Now, tell the jury what, if anything, you doctored her for about the month of March, 1893?

A. I treated her for a profuse discharge, leucor-hœa.
Q. She had leucor-hœa at that time?
A. Yes, sir.
Q. And you treated her for it?
A. Yes, sir.
Q. Do you know how long she had been ailing with that trouble?
A. More or less from the birth of her child.
Q. Doctor, what do you say as to whether a man having held intercourse, sexual intercourse with a woman during the time that she is suffering with leucor-hœa, may or may not have inflammation set up in the urethra known as urethritis?
A. Yes, sir.
Q. Is that a common thing to occur?
A. Well, it does occur.
Q. When was that child born?
A. 1892, in the fore part.
Q. Now, Doctor, what is the distinction between gonorrhea and urethritis?
A. We call it specific and non-specific disease.
Q. I will ask you if there is any positive way of determining specific urethritis save by the microscopic test.
A. Not any.
114 Q. Is it or not difficult to determine whether or not the party is suffering with gonorrhea, specific urethritis or with urethritis?
A. It is.
Q. And the only way that you can determine positively is to examine for the bacteria or the bacilli?
A. Yes, sir.
Q. If you find that in the discharge then you determine that it is gonorrhea?
A. Yes, sir.
Q. In its absence what would you say?
A. I would call it simply urethritis.
Q. What do you say as to whether gonorrhea is a constitutional disease?
A. It is not.
Q. Does it affect the longevity?
A. No, sir.
Q Does it tend to shorten life?
A. No, sir.
Q. I will ask you have you ever been an examiner for an insurance company.
A. Yes, sir.
Q. How long?
A. I have been examiner for the New England Mutual Life of Boston for two or three years.
Q. Now, I will ask you to state whether or not gonorrhea is regarded as material to an insurance risk.
A. I would not recognize it.
Q. You would not recognize it?

A. No, sir.

Q. I will ask you if it is so regarded by insurance companies.

Question objected to by counsel for the defendant.

Q. Have you knowledge as to whether insurance companies doing a general life-insurance business regard gonorrhea as material to the risk?

A. I could not say positively in regard to that, only as far as I am concerned.

Q. Now, Doctor, I will ask you if it is possible for a stricture to develop or show itself in the case of a man who comes to you
115 suffering with gonorrhea—that you would diagnose as gonorrhea, and he says that he has had intercourse with a woman six days before, or four or five days before, and what do you say as to whether it is possible that when he comes to you that there would be a stricture of the urethra.

A. I would not regard stricture possible in the acute stage.

Q. I will ask you if it would be possible for stricture to develop inside of eight or ten days?

A. Not before that.

Cross-examination by Mr. DAVIS:

Q. Doctor, at what time was it you treated Mrs. Warren for leucor-hœa?

A. The latter part of February, 1893.

Q. The latter part of February, '93?

A. Yes, sir.

Q. And how long subsequent to that time?

A. I had treated her not locally before that; simply prescribed for her from the birth of the child; this originated at the time of her ailment——

Q. The question I ask you was when you began to treat her for leucor-hœa?

A. Well, the latter part of February, 1893.

Q. Did you communicate her condition to Mr. Warren?

A. I did.

Q. He had knowledge of the fact that she was afflicted with leucor-hœa at that time?

A. Yes, sir.

Q. Did he ever consult you in regard to any private trouble of his own?

A. No, sir; I never treated him until just before his death.

Q. What did you treat him for then?

A. Colitus.

Q. What is that, inflammation of the colon?

A. Yes, sir.

Q. That is the large intestine?

A. Yes, sir.

Q. At what time was that?

A. November 14, '95.

Q. In speaking of this new name for gonorrhea, urethritis,
116 I believe you said that it was specific and non-specific?
A. Yes, sir.
Q. Will you tell this jury what urethritis is; these gentlemen don't know these technical terms?
A. The only way to positively tell that would be—specific, we regard that as true gonorrhea with the microscopic diagnosis, that by finding the gonococci, that is the germ of gonorrhea.
Q. That is the genuine clap?
A. That is the genuine stuff.
Q. And the non-specific; what is that?
A. That might be a case of some other irritation, simulating gonorrhea.
Q. In the absence of a microscopic examination I believe you said that you would regard the case as simple urethritis?
A. No, sir; I would not—I could not give a positive diagnosis without a microscopic examination.
Q. Didn't you say in your examination-in-chief in the absence of a microscopical examination that you would regard it as simple urethritis?
A. No, sir; if I said it, I did not mean it.
Q. How many times do you resort to a microscopical examination, Doctor?
A. When I am in doubt.
Q. How often are you in doubt?
A. They are both treated a good deal alike and we don't always go so far as to find out positively; we treat a case of urethritis whether specific or non-specific alike.
Q. How many times have you ever made a microscopical examination?
A. I never make it; I send it to Professor J. E. White, at Cleveland.
Q. In almost every case that comes to you you treat it for urethritis, do you?
A. Yes, sir; they are all urethritis.
117 Q. Do you subscribe to this theory that specific urethritis is a self-limiting, a self-curing disease?
A. I think so.
Q. Well, what in the world are men monkeying around with the doctors for then? What are they going to doctors for if it will cure itself?
A. It is not always self-limiting, is the reason.
Q. If it is not always then it is not a self-limiting disease, is it?
A. Yes, sir; it is considered as such.
Q. If it will accident-ly cure itself once in a while—how often have you treated cases of that kind?
A. I could not enumerate them.
Q. Well, about how frequently do they come to you in Prospect?
A. I could not say positively; I have treated it.
Q. You can give some idea about it, can't you?

A. I don't have a great many of that class of patients.
Q. How?
A. Well, I should judge possibly——
Q. Did you say that you had a good many of that kind?
A. No, sir; not a great many.
Q. Then it is not from experience that you are testifying?
A. Yes, sir; I can say so.
Q. Which?
A. That it is from experience; I have had plenty of experience in that. I don't treat them every day, but possibly one in three months or two months.
Q. You start in always with the presumption that it is urethritis, a harmless, innocuous disease?
A. No, sir; not necessarily.
Q. What is your theory about it; if a man comes to you as suggested by counsel, a married man comes to you and says that he has been having connection with a women not his wife and he has got trouble in his privates and a copious discharge simply with a casual examination it might indicate urethritis, now what
118 would be your suspicion?
A. I would have my suspicion that it was gonorrhea.
Q. Would you then make a microscopical examination?
A. I would if I wanted to be positive.
Q. Wouldn't you want to be positive in a case of that sort?
A. Not necessarily.
Q. You don't think it would be of any importance to know whether it was one or the other?
A. No, sir.
Q. Well, that is all regarding that matter, Doctor. I think you stated that a stricture of the urethra is not possible in the acute stage; did I understand you correctly?
A. Yes, sir; in an ordinary case I would say so.
Q. You did not say an ordinary case, did you; didn't you say it was not possible?
A. Not possible in the acute stage.
Q. Then if the stricture did exist in an early stage of the case of gonorrhea it must have existed before the gonorrhea was acquired, didn't it?
A. If there was one, I should think so.

Redirect examination by MARRIOTT:

Q. I want to ask you one question; speaking of the cases you have treated for gonorrhea, is Prospect in Marion or Delaware county?
A. Marion county.
Q. You and Judge Davis are from the same county, then?
A. Yes, sir.

And also:

Dr. JOHN W. N. VOGHT, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Examined by Mr. JONES:

Q. What is your occupation or profession?

A. I am a physician.

119 Q. How long have you been a practicing physician?

A. Twenty-one years.

Q. Of what school are you a member?

A. Regular.

Q. What college are you a graduate of?

A. Columbus Medical.

Q. Doctor, what is the character of gonorrhea; what kind of a disease is it?

A. Well, it is an inflammation of the urethra.

Q. I wish you would give a general description of the disease and the extent of it, Doctor, and what kind of a disease you call it?

A. Well, it is an inflammation of the urethra and the urethra is the tube or passage that leads from the bladder out, and it is the inflammation of the membrane of that tube; it begins, of course, low down and ascends frequently.

Q. Now, Doctor, what kind of a disease is it; is it a limited disease generally?

A. It is a self-limiting disease; yes, sir.

Q. What do you say as to whether it is local or whether it — a blood disease?

A. Local.

Q. How as to a person being afflicted with that if he is cleanly in his habits and takes care of himself whether it will run its own course and cure itself?

A. Yes, sir; it will run its course finally; it takes a long while, though.

Q. Now, the doctor can facilitate the curing of it; is that true?

A. He can sometimes, yes, sir.

Q. Now, Doctor, I will ask you whether or not this gonorrhea is or is not a disease that is constitutional?

A. Oh, it is not constitutional, no, sir.

Q. What do you say as to whether or not it impairs the health to such an extent as to shorten life?

A. Oh, it don't do that.

120 Q. How is it regarded by the profession, as a serious disease or regarded as a mere local affection?

A. It is a local affection, a little painful, but not serious.

Q. Now, what do you say as to whether or not it is likely to impair the constitution and thereby destroy the health or impair man's general health?

(No reply.)

Q. Doctor, have you ever had any experience in life insurance as examiner?

A. Yes, sir.

Q. To what extent; please explain to the jury?

A. Well, I have been an examiner ever since I have been in the profession, since the second year.

Q. What do you say to the jury as to whether or not this local affection known as gonorrhea is or is not a material matter in a life-insurance risk?

A. Well, there is one company for which I examine now that asks that question.

Q. Well, how is it generally among companies as to that being regarded as a serious matter to be considered in life-insurance risks?

A. Oh, I think not; I have never considered it anything serious.

Counsel for the defendant move the court to strike out what the witness considered it. Motion sustained.

Q. Out of all the companies you represent is there more than one that asks that question?

A. One.

Q. I will ask you whether if a man has had *had* gonorrhea and has been cured of it, what effect, if any, that would have upon his longevity?

A. None at all.

Q. Now, Doctor, I will ask you this question; whether or not if a man should come to you claiming that he had had sexual relations with a woman four, five or six days before and you found a flow from the urethra, whether it would or would not be possible for a stricture to be developed within that time?

A. Whether it would be possible for a stricture to develop in four or five days? No, sir; it is not possible.

121 Q. I will ask you whether or not if he had relations with a woman four or five days previously and you found this flowing or exuding, whether it would be possible for a stricture to develop in seven or eight days afterwards?

A. Stricture? No, sir; it would not.

Q. If a man should claim that he had had a case of stricture of that kind what would be your opinion as to whether he was or was not mistaken as to the fact whether there was a stricture there?

A. Yes, sir.

Q. You would say that he was mistaken?

A. Yes, sir.

Q. I want to ask you about the malarial fever; suppose a man had had malarial fever and had recovered from it and suppose there was a question as to whether he had had that fever a week or seven or eight days longer, would that make any material difference as to his being a proper subject for life insurance?

A. Did you say he was cured?

Q. Suppose that he was over it?

A. No, that would not effect it.

Q. It would not effect his longevity?

A. No, sir.

Q. You would not regard that as a material matter in determining whether he was or was not a fit subject or a proper subject for a life-insurance risk?

A. I would not.

Cross-examination by Judge NASH:

Q. Doctor, where are you practicing medicine at this time?

A. Here in Delaware.

Q. How long have you been practicing here?

A. 21 years.

Q. You used the phrase in describing gonorrhea that I did not understand; you said it was a self-limiting disease; what do you mean by that?

A. I meant that it will get well eventually without any interference; that it will run itself out.

122 Q. What is the use of going to a doctor, then?

A. Well, the use is they generally want to get well a little quicker.

Q. And you claim that a doctor can help in that direction?

A. Yes, sir; that is what we take their money for; yes, sir.

And also:

Dr. C. W. SCHIDDESTER, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Examined by Mr. JONES:

Q. What is your profession?

A. Physician.

Q. How long have you been practicing medicine?

A. Seven years, lacking one month.

Q. Practicing in this city?

A. Yes, sir.

Q. Doctor, have you been an examiner, and if so to what extent, for life insurance companies, local examiner?

A. Well, I have been examining for life insurance companies for the past six years and I have credentials, I believe, from six old-line companies for special examination.

Q. Now, Doctor, I want to inquire whether or not you know anything about this disease commonly called gonorrhea?

A. I meet with a case of that kind occasionally.

Q. What is your opinion as to whether or not that is what is commonly known to the profession as a self-limiting disease or whether it is a constitutional disease?

A. It is regarded as a local self-limiting disease.

Q. What is your opinion, Doctor, as to whether or not if a man who had had gonorrhea and recovered from it, as to whether or not that does or does not have any effect on his longevity or the chances of his life?

123 A. It has no effect any more than a sore throat or any other local disease.

Q. It has no effect any more than a sore throat?

A. No, sir; or any other local affection of the mucous membrane.

Q. What would you say as to whether or not if a man had had gonorrhea and recovered from it as to whether that would be a material matter to be considered in determining the question of his risk in a matter of life insurance?

A. I think it would be immaterial.

Q. Take the question of malarial fever; suppose a man had had malarial fever and recover from it; would you regard that as a fact to be considered or material, or I will put it in this way, would it be a question to be considered as to whether the malarial fever which had run for one or two or three weeks would shorten his life in determining the question of the risk of life insurance?

A. No, sir; I think it would not be seriously considered in a case of malarial fever of that duration.

Q. What do you say, Doctor, as to whether or not this local trouble that is sometimes desiguated as urethritis as to whether that may be acquired through other sources other than improper sexual relation?

A. Yes, sir; it is.

Q. I will ask you whether or not it may be acquired from having sexual commerce with a woman who has leucor-hœa?

A. The simple urethritis may be obtained in that way.

Q. I will ask you if a man should have sexual relation with a woman in that condition he would not very likely have urethritis, and if it would not be very likely to produce it?

A. I think a great many escape in cases of that kind, yet they might get it.

Q. Now, if a man has what is called specific urethritis, I
124 will ask you whether or not it is similar in its symptoms to gonorrhea?

A. Why, it is very similar, usually not quite so severe.

Q. Would you be able to distinguish certainly between a case of urethritis and a mild case of gonorrhea, and a severe case of urethritis; would you be able to determine it?

A. You could not determine it certainly without a microscopical examination; if you would find the gonorrhea bacilli then you would know.

Q. That is sometimes called gonococci?

A. Yes, sir.

Q. That would be the test in a case of that kind?

A. Yes, sir.

Cross-examination by Mr. DAVIS:

Q. Did you say that a mild case of gonorrhea and a rather severe case of urethritis would be difficult to distinguish?

A. Yes, sir; that is positively.

Q. What would you say where a case was rather more than the average in severity of gonorrhea?

A. Well, you could not distinguish it positively then without the

microscope, but we would have reason within ourselves to believe that it might be—sufficient that we would not need to go to the trouble of microscopical examination as far as the treatment is concerned, because that is nearly the same.

Q. If a patient would tell you that he had been having intercourse with somebody that was not virtuous, not his own wife and would show that kind of symptoms, what would you judge as to the cause?

A. I would take it upon the face of the evidence that it was gonorrhea.

Q. You would not think that the man himself would be very likely to be mistaken as to whether he had that disease or urethritis, would you?

A. They are usually able to make their own diagnosis.

Q. In cases of that sort?

A. Yes, sir.

125 And also:

Dr. R. C. RICHIE, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Examined by Mr. MARRIOTT:

Q. What is your name?
A. R. C. Richie.
Q. Where are you living, Doctor?
A. At Jerome, in Union county.
Q. What is your business?
A. Physician.
Q. How long have you been engaged in the practice of medicine?
A. Fourteen years.
Q. Are you a graduate of a medical institution?
A. Yes, sir.
Q. What?
A. Columbus Medical College.
Q. Did you ever practice medicine in Delaware county?
A. Yes, sir.
Q. Where were you located?
A. Warrensburg.
Q. What relation was George E. Warren to you?
A. Not any.
Q. Were you related by marriage?
A. Yes, sir.
Q. I will ask you if you knew George E. Warren intimately?
A. Yes, sir.
Q. Do you remember the occasion of his having malarial fever?
A. Yes, sir.
Q. When was that?
A. It was in December or January, 1893–'4.
Q. Did you see him during his sickness?
A. Yes, sir.

Q. Were you called as a physician or did you go to see him as a friend?

A. I went as his friend.

Q. Now, you may tell the jury how long George was sick and confined to his bed at that time.

A. I don't know as I could do that.

Q. Do you know how long after he was taken sick that you saw him?

A. No; I could not say positive.

126 Q. Well, from anything that you learned from him how long had he been sick when you saw him?

By the COURT: Not what the patient may have said upon the subject.

Q. When was it that you saw him?

A. On the 5th day of January, 1894.

Q. On the 5th day of January, had you seen him before that during his sickness?

A. No, sir.

Q. Now, what was his condition at that time?

A. He was convalescent.

Q. Was he able to sit up?

A. Yes, sir.

Q. How soon after that do you know of his going about his business?

A. I think it was very soon, as we heard no more of him being sick.

Q. When you saw him was or was not his fever broken?

A. It was broken; he had no fever.

Q. Now, how frequently did you see him from that time on up to his death, Doctor?

A. Why, at intervals of a few days or a week and possibly in some instances two weeks.

Q. Tell the jury whether from the time he recovered from that sickness he was well and sound, so far as you observed.

A. So far as I ever observed he was the picture of health.

Q. Up to the time of his death?

A. Up to the time of his death.

Q. Were you present after his death and did you assist in any way in taking care of the body?

A. Yes, sir.

Q. Were you present when the body was laid out?

A. Yes, sir.

Q. Will you tell the jury whether or not there was anything on or about the body which would indicate any venereal disease, gonorrhea, syphilis, or anything of that kind?

127 A. There was no eruptions on the body of any kind; there were no scars that showed themselves to us at that time; there were no swellings in the groin and no induration.

Q. What do you say as to whether or not George E. Warren was

from the time he recovered from malarial fever a healthy and sound man up to the time that he met with his death?

A. I considered him such.

Q. Have you had any experience in the treatment of gonorrhea?

A. A limited experience.

Q. Will you tell the jury whether or not also you have had experience as a medical examiner for insurance companies, life insurance companies?

A. Yes, sir; I have.

Q. To what extent?

A. I have been examiner for some three or four, possibly five companies for a period of years, say ten years.

Q. What do you say, Doctor, if gonorrhea is regarded as material to the risk in life insurance?

A. It is not in my estimation.

Q. Is gonorrhea or not a constitutional disease?

A. It is not.

Q. What do you say as to whether gonorrhea tends to shorten life?

A. Of itself, no.

Q. Is it or not a merely local disease?

A. It is purely a local disease.

Q. What do you say, Doctor, as to whether or not it would be possible to have a stricture appear in a case where a man had had intercourse three, four or five days before consulting you and when he consulted you informed you that four or five days before he had had intercourse with a woman and you found a copious discharge from the urethra, whether or not it would be possible for a stricture to be present at that time?

A. Not as the result of that inflammation.

128 Q. What do you say as to whether it would likely be present after a period of a week?

A. No, sir; it would not.

Q. It would not?

A. No, sir.

Q. What do you say as to whether or not a stricture is not produced or might not be produced by the improper use of a urethral sound?

A. It very often is.

Q. Doctor, is there any way of making a positive and satisfactory diagnosis of a case without examining the discharge under a microscope?

A. No positive means.

Q. Isn't it true that it requires a very careful examination to tell whether the disease is gonorrhea or merely simple urethritis?

A. Yes, sir; the physician arrives at a conclusion by exclusion and the character of the patient, if they are acquainted with him that might have some influence on the diagnosis.

Cross-examination by Mr. DAVIS:

Q. What do you mean by "exclusion," Doctor?
A. Excluding other troubles or causes.
Q. Explain then so we can understand you?
A. If the patient be of a very low character and he would come to a physician with trouble of that kind, the character of the patient would have an influence on the physician in making up his mind, as to what was the matter.
Q. You think that that would settle it without anything farther?
A. It would have its influence.
Q. Suppose a preacher of the gospel would come and say that he had been to a house of prostitution and had trouble of that kind, what would you think about it?
A. In what respect?
Q. As to whether the disease was gonorrhea or this new-
129 fangled disease that these gentlemen have got up here, urethritis?
A. I don't know as I understand what you mean for me to answer.
Q. Well, I will try and bring it down to your comprehension; if a minister of the gospel, a man of unimpeachable character in the community should come to you as a physician with a state of inflammation of the urethral canal and a copious discharge from him and tell you that he had a few days before had connection with a prostitute, what would you think as to whether that disease was urethritis or gonorrhea?
A. If his character was unimpeachable and he made a statement of that kind, of course it would have its influence and I would believe him.
Q. What influence would it have?
A. I should believe him of course.
Q. What would you make up your mind as to what disease it was?
A. I would make up my mind that he had the clap.
Q. And you would not be mistaken about it?
No reply.

And also:

Judge E. M. WICKHAM, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Examined by Mr. MARRIOTT:

Q. Did you have a conversation with Dr. Wells, of Marion, at his office a few days before this case was set for trial, two weeks ago?
A. Yes, sir.
Q. I will ask you if in that conversation he said to you in speaking of the treatment of George Warren that the disease which he called gonorrhea was a mere ordinary case of gonorrhea?
A. Yes, sir.

Q. I will ask you then if you asked him if there were com-
130 plications connected with it and if he did not answer you that there was none whatever?

A. Yes, sir.

Q. I will ask you if he said anything there in your presence or in your hearing about a stricture?

A. No, sir; he said nothing about a stricture to my recollection.

Q. He did not mention it when you asked him if there were any complications with it?

A. No, sir.

Q. Did you inquire of him carefully as to what he found was the matter with George?

A. Yes, I did.

Q. Tell the jury whether he mentioned anything about any bladder trouble?

A. No.

Q. Now, I will ask you if he did say to you or in your hearing that the stricture was not cured when he sent him away?

A. He did not say anything about a stricture.

Q. That is what I understood you to say; now, I will ask you if he did or did not say to you that when he turned George Warren off that he sent him away a cured and a well man?

A. He did.

Cross-examination by Mr. DAVIS:

Q. Are you one of the attorneys in this case?

A. Yes, sir.

Q. When did you find out that Dr. Wells was a witness in the case?

A. I think it was on Thursday evening that I first learned that he was expected to be a witness in this case.

Q. Did you go up there to qualify yourself to be a witness?

A. No, sir; I went up there to see if I could learn what Dr. Wells would testify to.

Q. When did you go?

A. I went the next day, on Friday.

Q. Well, you did not have him subpœnaed?

A. No, sir.

Q. What was it to you whether he qualified himself or not?

A. I wanted to know what the force of his testimony would be.

131 Q. Then it was not to know whether he would qualify himself as a witness?

A. What do you mean by qualifying himself? As an expert witness?

Q. I use your own language.

A. I did not say that.

By Mr. MARRIOTT:

Q. I will ask you if you did or did not go there at the special instance and request of General Jones and myself?

A. Yes, sir; certainly.

And thereupon the plaintiff in rebuttal rested.

And this was all the evidence introduced or offered by either party in said cause.

And thereupon counsel for the plaintiff requested the court to charge the jury as follows:

The plaintiff asks the court to give to the jury the following proposition of law, to wit:

"That the statute, section 3625, was in force at the time the policy in this case was issued, and is, therefore, a part of the contract of insurance upon which the policy of insurance was issued, and governs the rights and obligations of the parties as if all its terms and conditions had been incorporated therein;" which charge the court gave in its general charge to the jury.

And thereupon counsel for the plaintiff asked the court to give the jury the following charge:

The plaintiff asks the court to give to the jury the following proposition of law, to wit:

"That under section 3625 of the Revised Statutes of Ohio no answer to an interrogatory made by an applicant in his or her application for a policy, shall bar the right to recover upon a policy issued upon such application, or be used in evidence upon a trial to recover upon such policy, unless it be clearly proved that
132 such answer is willfully false and was fraudulently made, that it is material, and induced the company to issue the policy, and that but for such answer the policy would not have been issued; and, moreover, that the agent or company had no knowledge of the falsity or fraud of such answer," which charge the court refused to give except as given in the general charge and to which refusal of the court to charge as requested, counsel for the plaintiff at the time excepted.

And thereupon counsel for the plaintiff requested the court to give the jury the following charge:

The plaintiff asks the court to give to the jury the following proposition of law, to wit:

"The term good health, when used in an application for a policy of life insurance, means that the applicant has no grave, important or serious disease, and is free from any ailment that seriously affects the general soundness and healthfulness of the system. A mere temporary indisposition which does not tend to weaken or undermine the constitution at the time of taking membership does not render a policy void;" which charge the court refused to give except as given in the general charge and to which refusal of the court to charge as requested counsel for the plaintiff at the time excepted.

And thereupon counsel for the defendant requested the court to give the following special charge to the jury:

Special charge to the jury asked for by the defendant.

"The policy or contract upon which this action is based and the application made by George E. Warren for the same, constitute a

warranty that all answers by said Warren contained therein
133 are true, and if any one or more of said answers is untrue, though made without actual fraud, and under an innocent misapprehension of the purport of the questions and answers, no contract of insurance is thereby made and the policy is void *ab initio*, and your verdict should be for the defendant;" which charge the court, on consideration, refused to give, and to which refusal of the court to charge as requested counsel for the defendant at the time excepted.

And thereupon counsel for the defendant claimed that the right to open and close the argument of this cause belonged to the defendant herein, and the defendant was accorded that right by the court, to which counsel for the plaintiff objected and excepted at the time.

And thereupon the letters heretofore marked for identification as Exhibits No. "6" to "15" inclusive, which the court has admitted in evidence, but which were not read at the time were withdrawn as evidence in the case and the same were not read or offered to the jury in any respect.

And thereupon an adjournment was had to Wednesday morning, January 27, 1897, at 8.30 o'clock.

134 WEDNESDAY MORNING SESSION, *Jan.* 27, 1897.

And thereupon the court charged the jury orally as follows:

GENTLEMEN OF THE JURY: The plaintiff, William M. Warren, brings this suit against the defendant, The John Hancock Mutual Life Insurance Company, and for his cause of complaint says that the defendant is a corporation organized under the laws of the State of Massachusetts and authorized to do business in the State of Ohio; that he was the father of George E. Warren and that on the 27th day of September, 1895, in consideration of the sum of two hundred and thirty-eight dollars to be paid on or before that date, and certain other payments to be made thereafter as stipulated, the defendant issued to him a policy of insurance upon the life of George E. Warren thereby agreeing to pay him in the event of the death of George E. Warren the sum of $5,000.

The plaintiff avers that on the 26th day of November, 1895, George E. Warren died; that *they* had complied with the requirements of said contract in the matter of paying the premium agreed to be paid for said insurance; that on the 5th day of December, 1895, proof of the death of George E. Warren was made to the defendants as required by the condition of their contract; that the defendants have not paid the plaintiff this sum of $5,000, and they ask for a verdict at your hands against the defendant in this case for the sum of $5,000 with interest, from the 5th day of December, 1895.

To this claim of the plaintiff the defendant has filed its answer in which it admits that it is incorporated under the laws of Massachusetts,
and authorized to do business under the laws of the State of
135 Ohio. They admit that the plaintiff, William M. Warren, was the father of George E. Warren, and that George E.

Warren died as is alleged in the plaintiff's petition; that on the 27th day of September, 1895, they entered into the written contract of insurance with the plaintiff as contained in the policy of insurance attached to the plaintiff's petition. They deny that George E. Warren was indebted to the plaintiff, William M. Warren. For a further defense they say that the policy of insurance issued by them to the plaintiff in this case was issued upon an application made by George E. Warren to the defendant company, which application is made a part of said policy of insurance, and the policy of insurance provided that if any statement made in such application was untrue in any respect said policy of insurance should be void. They say that in the application made by George E. Warren that certain interrogatories that were answered by George E. Warren, that he was inquired of and answered, that he was in good health, that he had not been obliged to consult a doctor during the ten years last preceding the date of said application except once, and that was in 1893 for malarial fever, which sickness was of one week's duration; that the last time he had consulted a physician was in the year 1893, and on account of said attack of malaria- fever; that he had never had, or been predisposed to the disease known as syphilis; that he had never had any illness or disease other than malarial fever in 1893.

The defendants says that those answers by George E. Warren to those questions were false and untrue, and were known by George E. Warren at the time he made them to be false and untrue, and that they were made for the purpose of defrauding this defendant.

The defendant says that at the time of making this application to the defendant for this insurance, George E. Warren had syphilis and knew it; that he had been obliged frequently during the ten years immediately preceding the making of said application to consult a physician on account of said disease; that he had had a disease or diseases other than as is in his said application and that he was not at the time said application was made in good health. The defendant says that the statements contained in this application were the basis upon which their contract or policy of insurance was issued by them to the plaintiff, and that the contract provided that if these answers to those interrogatories were false that the policy itself should be void. The defendant therefore claims that this policy of insurance was void and they are not liable to the plaintiff thereon.

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To this answer of the defendant the plaintiff has filed his reply in which he denies that George E. Warren was not in good health on the 27th of September, 1895, and in reply to the second defense, denies that the statements and answers were made by George E. Warren to the defendant in his application for this policy of insurance in suit in this case, and he denies that any statements that were made by George E. Warren in his application for this policy of insurance were false. They aver that at the time of the making of this application by George E. Warren that he was in good health, and that the answers made by him to the interrogatories asked were true. As a further reply they say that the defendant company did

not return with and as a part of the policy of insurance issued by them to the party taking said policy during his lifetime, a complete copy of the application, or document held by them, which was intended to affect the force and validity of such policy of insurance; that they did not furnish to George E. Warren with his policy a copy of the application or other papers constituting a part of
137 said policy of insurance; that on the 29th of February, 1896, the plaintiff demanded of the defendant a copy of said application made by George E. Warren, upon which the policy in this case was issued, and that they wholly failed and neglected to furnish a copy of said application to the plaintiff, whereby they aver that they have become estopped from denying the truthfulness of any of the statements made by George E. Warren to the defendant in his application for the policy of insurance involved in this suit.

These pleadings state the respective claims of the parties and make the issue that you are to try and determine from the testimony that has been introduced in the progress of this trial under the instructions of the court as to the law applicable to the case.

In view of the admitted facts in the pleadings in this case the court was of the opinion that the burthen of proof was upon the defendant-; that is, it not being denied but what the defendants were organized as averred in the petition, that they had issued this policy of insurance to the plaintiff, and that the plaintiff has complied with the provisions and requirements so far as he was concerned, and that George E. Warren was dead, and that proof of his death had been made to the defendant-, the plaintiff would be entitled to recover unless the defendants had sustained the matters offered by them as a defense. The only matter averred in the plaintiff's petition being that the plaintiff was a creditor of George E. Warren's that was traversed in the defendant's answer, the court not deeming it material instructs you that the burthen of proof in this case is upon the defendant-, and they must establish the facts necessary to constitute their defense by a preponderance of the testimony. If they have established those facts by a preponderance of the
138 testimony, then they are entitled to your verdict; if they have not established this defense, or those facts constituting their defense by a preponderance of the testimony then the plaintiff is entitled to recover upon this policy of insurance, and entitled to your verdict for the amount thereof, with interest thereon from the 5th day of December, 1895.

The facts necessary to constitute the defense of the defendant- is, that in the application made by George E. Warren to them for this policy of insurance involved in this suit that there were false statements made, and that those statements were of such a character as under the law would make the policy of insurance void. If the defendant has established this claim, then your verdict should be for the defendant; if it has not, then your verdict should be for the plaintiff.

In the consideration of this case in its logical order the first questions that would come up for you to consider and determine are the questions that were asked by the defendant and answered by George

E. Warren in his application to obtain the policy of insurance involved in this suit. There are two applications that have been introduced in testimony, one dated the 17th of September, 1895, and the other dated September 27th, 1895. It is claimed by the plaintiff that only the application of September 27th, 1895, is the basis upon which the policy of insurance involved in this suit was issued; while it is claimed on behalf of the defendants that the application of September 27th, 1895, so referred to and made the application of September 17, 1895, a part of it; that the questions and answers contained in the application of September 17, 1895, were the basis upon which the policy in suit in this case was issued.

Now, whether that is so or not depends upon the construction to be put upon the application of September 27th, 1895, and
139 when the evidence is in writing or in a written form instead of submitting it to the jury to determine its significance, it is the province of the court to instruct you as to the effect of written documentary evidence. It, therefore, becomes the duty of the court in this case to instruct you as to the effect of the application of September 27th, 1895, and without stopping to re-read it to you, as it has already been read in evidence, the court says to you that the application of George E. Warren of the date of September 27th, 1895, so refers to and makes the application of September 17th, 1895, a part of it, so that in determining the questions and answers made by George E. Warren that were the basis upon which the policy of insurance in this case was issued, you are to take both the application of September 27th, 1895, and the application of September 17th, 1895, and from those you will determine the questions that were asked and answered by George E. Warren to the defendant, as the basis upon which the policy of insurance in this case was issued.

Now, having determined that question, the next question for you to determine in the logical order is whether or not these answers made by George E. Warren to the questions were false or not, and if they were false, were the questions and answers of such a character as would, under the law, avoid the policy of insurance issued by the defendant to the plaintiff. As to whether or not any of the questions asked by the defendant and answered by George E. Warren were false or not is a question of fact for you to determine from the testimony. Testimony has been introduced upon that subject, and it is for you to take it and weigh it, and give it such weight as in your judgment it is entitled to receive; and from it make up your minds as to whether or not any questions asked by the defendant of George E. Warren and answered by him,
140 *was* falsely answered. Of course, if they were not, gentlemen of the jury, if the answers made were true, then you need not go any farther, and you need not consider whether or not they were such questions as being answered falsely would invalidate the policy of insurance. If you find that they were, then you will take up and consider and determine whether or not the question to which false answer was made by George E. Warren as you find

from the testimony was of such a character as under the law would avoid the policy of insurance.

Our statute provides that "no answer to any interrogatory made by an applicant, in his or her application for a policy, shall bar the right to recover upon any policy issued upon such application, or be used in evidence upon any trial to recover upon such policy, unless it be clearly proved that such answer is willfully false and was fraudulently made, that it is material, and induced the company to issue the policy, and that but for such answer the policy would not have been issued; and, moreover, that the agent or company had no knowledge of the falsity or fraud of such answer."

Every answer that is made in an application for a policy of insurance, even if false, would not have the effect of avoiding the policy of insurance. The question asked to which the false answer is given must be of the character designated in the provision of the statute which I have read in your hearing. This law being in force at the time this policy of insurance was taken out, is applicable to the policy of insurance involved in this case. And is applicable to questions and answers in the application that by the term- of the policy are made express warranties as well as those that are not. Parties are presumed to contract with reference to the law of the State upon the subject with reference to which they are contracting, and this section of the statute is to be
141 taken in connection with the contract, and you are to determine, therefore, whether or not the question asked to which the false answer was given was or was not such as under this section of the statute would avoid the policy of insurance. I do not think, gentlemen of the jury, that there is any language used in this statute that the court need explain to you. The answer must be willfully false, that is, the party must know it was false, and knowing it to be false, makes it. That makes the act willful. To simply state a thing that is not true, without knowledge of its untruth, would not make an act upon the part of the person stating it a willful act; he must know that it was false, and make it, knowing it to be false in order that it should be a willful falsehood. It must be made fraudulently; if it was made to induce a party to incur a risk or liability that they would not otherwise have incurred, it would be fraudulent if false. It must be material and concerning a material matter in the effecting of the policy of insurance by the defendant, and it must induce the company to issue the policy, and but for such answer to the question the policy of insurance would not have been issued; and moreover, that the agent of the company had no knowledge of the falsity of the statement.

Now, if you find any statement made by George E. Warren in his application to the defendant for this policy of insurance was false and that question and that answer was of the character designated in this statute, then it would avoid the policy, that is, if it was willfully false and fraudulently made, and material and induced the company to issue the policy, and but for it they would not have issued it, and they had no knowledge of it, then it would avoid the policy. But if it was not material or so made it would not have

that effect, and that you are to determine from the testimony that has been introduced in this trial.

142 Now, a question is made, gentlemen of the jury, as to the defendant being estopped from denying the truthfulness of any of those statements made by George E. Warren in the application. Our law provides that "every company doing business in this State shall return with, and as part of any policy issued by it, to any person taking such policy, a full and complete copy of each application or other document held by it which is intended in any manner to affect the force and validity of such policy, and any company which neglects so to do shall, so long as it is in default for such copy, be estopped from denying the truth of any such application or other document; and in case such company neglect, for thirty days after demand made therefor, to furnish such copies, it shall be forever barred from setting up, as a defense to any suit on such policy, any incorrectness or want of truth of such application or other document."

But when they furnish to the person taking such policy a list of the questions asked or answers given, they are not estopped from denying the truthfulness of any of the questions asked or answers given after they had furnished a list to the party assured; that is, a list of those questions. So that if you find from the testimony in this case that the defendant returned with and as a part of the policy of insurance to the person taking such policy a list of the questions asked and answers given, then they would not be estopped from denying in a suit upon the policy the truthfulness of any of those answers to any of those interrogatories.

Now, it is further claimed in the second reply filed to the answer of the defendant in this case that the plaintiff, having demanded of the defendant a copy of this application, that they failed within thirty days to furnish *them* with such copy and therefore it

143 is claimed in their reply that the defendants were estopped from denying the truthfulness of any of the statements contained in this application. Upon that subject it is sufficient for me to say to you that in the proof offered by the plaintiff tending to prove the averments of this reply, having been withdrawn there is no question of estoppel for you to consider and determine from this claim of the plaintiff in his second reply, and the defendants are not estopped from denying the truthfulness of any statements or of any questions asked or answers given by George E. Warren, a copy of which was returned with, and as a part of, the policy to the person taking out the policy of insurance.

Now, gentlemen of the jury, in view of the range of argument taken in this case, it is necessary for the court to say to you that there is no question in this case as to the necessity of the defendant returning to the plaintiff the premium paid by George E. Warren to them for this policy of insurance. That question is not before you, and it is not necessary for you to worry your minds with the question, because it is not involved in this case, and it is sufficient for you to consider and determine the questions that are made.

Now, I think I have gone over them all, gentlemen of the jury,

and I do not know that it is necessary for me to repeat them to you. I believe that you have now a comprehension of what you are to decide from the testimony in this case, and where the burden of proof lies.

If you find from the testimony that George E. Warren made statements in his application for this policy of insurance that were false, and that the questions and answers were of such a character as under these instructions would avoid the policy of insurance, then the policy of insurance would be void and your verdict should be for the defendant.

144 If you find from the testimony in this case that George E. Warren did not make any false statements in his application for this policy of insurance, or that if he did, and the question asked and the answer given that was false was not of such a character as under these instructions would avoid the policy of insurance, then the policy would not be void, and the plaintiff would be entitled to recover upon it; and if he is entitled to recover upon it, gentlemen of the jury, under this policy of insurance, it being admitted that proof of death was furnished upon the 5th day of December, he would be entitled to recover interest upon this amount from that date.

The consideration and determination of this case, therefore, beyond these instructions depends upon the facts, and that is for you. You are the sole judges of the facts; you will carefully consider all the testimony that has been introduced, giving it such weight as in your judgment it is entitled to receive, and from it make up your minds as to how the issue stands.

If you find for the plaintiff, your verdict should be for the amount of this claim with interest since the 5th day of December, 1895. You will make your own computation of the interest and return your verdict for the aggregate amount.

If you find for the defendant your verdict would be simply for the defendant.

Mr. JONES: You used the term September, it should be December.

The COURT: I mean to say December 5th, 1895.

I think of nothing farther that it is necessary for the court to say to you. It being now the hour of adjournment, when you have organized you may adjourn until 1 o'clock and then assemble in your room and commence the consideration of this case, and

145 you will be especially careful now that the case is finally submitted to you, that you do not allow anybody to talk with you, or in your presence, concerning the case.

And thereupon counsel for defendant excepted to the following language contained in said charge to the jury, as follows:

"The question asked to which the false answer is given must be of the character designated in the provision of the statute which I have read in your hearing. This law being in force at the time this policy of insurance was taken out, is applicable to the policy of insurance involved in this case, and is applicable to questions and

answers in the application that by the terms of the policy are made express warranties as well as those that are not. Parties are presumed to contract with reference to the law of the State upon the subject with reference to which they are contracting, and this section of the statute is to be taken in connection with the contract, and you are to determine, therefore, whether or not the question asked to which the false answer was given was or was not such as under this section of the statute would avoid the policy of insurance."

And thereupon counsel for the defendant excepted to the following language contained in said charge to the jury, as follows:

"It must be made fraudulently."

And thereupon counsel for the defendant excepted to the following language contained in said charge to the jury, as follows:

"It must be material and concerning a material matter in the effecting of the policy, and but for such answer to the question the policy of insurance would not have been issued; and moreover, that the agent of the company had no knowledge of the falsity of the statement."

146 And thereupon counsel for the defendant excepted to the following language contained in said charge to the jury, as follows:

"Now, if you find any statement made by George E. Warren in his application to the defendant for this policy of insurance was false and that question and that answer was of the character designated in this statute, then it would avoid the policy, that is, if it was willfully false and fraudulently made, and material and induced the company to issue the policy, and but for it they would not have issued it, and they had no knowledge of it, then it would avoid the policy. But if it was not material or so made it would not have that effect, and that you are to determine from the testimony that has been introduced in this trial."

And thereupon counsel for the defendant excepted to the following language contained in said charge to the jury, as follows:

"If you find from the testimony in this case that George E. Warren did not make any false statements in his application for this policy of insurance, or that if he did, and the question asked and the answer given that was false was not of such a character as under these instructions would avoid the policy of insurance, then the policy would not be void, and the plaintiff would be entitled to recover upon it; and if he is entitled to recover upon it, gentlemen of the jury, under this policy of insurance, it being admitted that proof of death was furnished upon the 5th day of December, he would be entitled to recover interest upon this amount from that date."

And the jury having found in favor of the plaintiff, the defendant within three days filed its motion for a new trial, which motion the court overruled, to which ruling of the court counsel for

147 the defendant at the time excepted, and the court rendered a judgment upon said verdict, to which finding and judgment of the court counsel for the defendant at the time excepted, and the

defendant presents this, its bill of exceptions, and prays that the same be allowed, signed and sealed and made a part of the record herein, but the same is not to — spread at large upon the journals of this court, all of which is accordingly done this 6th day of February, A. D. 1897.

J. B. WAIGHT, [SEAL.]
Judge Court of Common Pleas, Delaware County, Ohio, and Trial Judge in this Case.

FEB'Y 3D, 1897.

We have examined the foregoing bill of exceptions and approve the same as correct.

GEO. K. NASH,
Att'y for the Defendant.

148 EXHIBIT No. 1.

(Approved. S. H. Rhodes, president.)

Memo. to be filled only at the home office.

Received at Boston, Sept. 20, 1895.

Policy No. 41361.

Policy Statement.

Commencing Sept. 20, 1895. Age, 31. Amount insured, $5,000. Kind of policy, 20 E. Annual rate, $238.00. Payable, annually.

Application to the John Hancock Mutual Life Insurance Company, Boston, Mass. Declarations made to the medical examiner in answer to questions to be asked only by him, in private, and answered by the person examined, the answers forming part of the policy contract.

1. Full name, George E. Warren.
2. Place of birth—town, Warrensburg; county, Delaware; State, Ohio.
3. Date of birth—year, 1864; month, December; day, sixteenth.
4. Age at next birthday, 31 years.
5. Residence—town, Prospect; county, Marion; State, Ohio.
6. *a.* Present occupation? Wholesale dealer in hay and grain. *b.* Former occupation? School teacher.
7. Do you contemplate a change of residence or occupation? No.
8. Have you ever sought a change of climate or occupation on account of your health? No.
9. Are you now in good health? Yes.
10. Have you been successfully vaccinated? Yes.
11. *a.* Have you been obliged to consult a doctor at any time during the last ten years? If so, when and for what? *a.* 1893, malarial fever, one week's duration.

149 *b.* When and for what did you last consult a doctor? *b.* Malarial fever in 1893, as above stated.

c. Are you now under a doctor's care? If so, for what? *c.* No.

d. Name and residence of your usual medical attendant? *d.* Dr. A. L. Gast, Prospect, Ohio.

12. *a.* Do you use ardent spirits, wine or malt liquors? If so, to what extent—average quantity each day? *a.* No.

b. Have you ever used intoxicating liquors to excess? *b.* No.

c. Are you now using opium, morphia or other narcotic, or have you ever used them? *c.* No.

d. To what extent do you use tobacco? *d.* None.

13. Has any proposal or application to insure your life ever been made to any company or agent upon which a policy has not been issued, or is any now pending? If so, give full particulars. No.

14. Has any medical examiner ever given an unfavorable opinion in regard to the insurableness of your life? No.

15. Family history:

Father—age, 60 years; condition of health, good.

Mother—age at death, 31 years; cause of death, puerperal fever; how long sick, died one week after birth of child; previous health good.

Brothers—full—age, 29 years; condition of health, good; half—age, 14 years; condition of health, good; number living, two; number dead, none.

Sisters—full—age, 35, 33, 25 years; health, good; half—age, 16 and 12 years; health, good; full—age at death, one week, died at same time as mother; half—age at death, 5 years; cause of death, membraneous croup; how long sick, two days; previous health, good; number living, three full and two half; number dead, two.

Father's father—age at death, 79 years; cause of death, and how long sick, unknown to applicant; previous health, good.

Father's mother—age at death, 75 years; cause of death, and how long sick, unknown to applicant; previous health, good.

Mother's father—age at death, 76 years; cause of death, and how long sick, unknown to applicant; previous health, good.

Mother's mother—age at death, 65 years; cause of death, and how long sick, unknown to applicant; previous health, good.

16. Have any of your near relatives (including uncles and aunts) now or ever had consumption, cancer, apoplexy or other hereditary disease (state ages and other particulars)? No.

150 17. Which parent do you resemble in appearance and constitution? Father.

18. Have you ever had or been predisposed to any of the following diseases or infirmities? If so, state the full particulars, giving dates, severity, duration, nature and number of attacks? Answer yes or no to each.

Apoplexy. No.	Fits. No.
Asthma. No.	Gout. No.
Bronchitis. No.	Gravel. No.
Cancer or tumor. No.	Headache, frequent or severe. No.
Colic of any kind. No.	Insanity. No.

Coughs, prolonged. No.
Discharge from the ear. No.
Disease of the brain. No.
Disease of the heart. No.
Disease of the lungs. No.
Disease of the throat. No.
Disorder of the liver. No.
Disease of the bladder. No.
Disease of the kidneys. No.
Dizziness. No.
Dropsy. No.
Diarrhœa, habitual. No.
Dyspepsia. No.
Fistula. No.
General debility. No.
Lumps or swellings. No.
Open sores. No.
Pain in back. No.
Paralysis. No.
Palpitation. No.
Piles. No.
Rheumatism. No.
Rupture. No.
Scrofula. No.
Skin disease. No.
Spitting of blood. No.
Stricture of urethra. No.
Swelling of the feet. No.
Syphilis. No.
Varicose veins. No.

If there is rupture, of what kind is it? Is it reducible, and is a truss worn?

19. Have you ever had any illness or disease other than as stated by you above? State full particulars. No.

I hereby warrant that all the statements and answers made by me above are complete and true. I agree that there shall be no contract of insurance until a policy shall have been issued and delivered, and the first premium thereon paid, while I am in good health, and if said policy be issued, this application, with answers made to the medical examiner, shall be a part thereof, and I waive all provisions of law preventing any physician from disclosing any information acquired in attending me in a professional capacity or otherwise, or rendering him incompetent to testify as a witness in any way whatever.

151 In any distribution of surplus, the principles and methods which may be adopted by the company for such distribution, and its determination of the amount equitably belonging to such policy, shall be accepted by, and for, every person who shall have any interest under said policy, and the receipt of the person whose life is insured, shall be in full surrender of all dividend additions to the policy.

GEO. E. WARREN, *Applicant.*

Witness:
J. B. SCHUELLER, M. D.

Dated at Columbus, O., on the seventeenth day of September, 1895.

EXHIBIT No. 2.

Medical Examiner's Report.

Name, George E. Warren.
Residence, Prospect, Ohio.
1. Were you and the applicant alone for this examination? Yes.
2. Do you personally know the applicant? No.
3. Does the applicant's appearance indicate health and vigor? Yes.

4. Mention any scar or other means of identification. Tips of first and second finger- of left hand cut off, shortening fingers slightly; nails preserved but bent downward.

5. Race, white. Complexion, dark. Shape of chest, normal. Figure, erect.

6. *a.* Applicant's height, 5 ft. 9½ in. Weight, 165 lbs.

b. Circumference of chest on full expiration, under vest, 33¼ in.

c. Circumference of chest on forced inspiration, under vest, 38 in.

d. Girth of abdomen, 31 in.

e. Did you weigh and measure him? Measured but not weighed him.

f. If not, are you satisfied that these figures are correct? Yes.

7. Has applicant's weight recently increased? No. Or diminished? No.

9. Has the applicant ever had severe headaches, vertigo, fits or any nervous or muscular trouble? No.

10. *a.* Has the applicant ever had syphilis, stricture, or any disease of the generative organs? *a.* No.

152 *b.* Is there any eruption on any part of the body? *b.* No.

c. Is there any discharge from the ear? *c.* No.

11. *a.* Has the applicant any cough or hoarseness at the present time? *a.* No.

b. Is he subject to cough, expectoration, palpitation or difficulty of breathing? *b.* No.

c. Has he ever been? State full particulars? *c.* No.

12. *a.* Is the respiratory murmur clear and distinct over every part of both lungs? *a.* Yes.

b. Is the respiration full, easy and regular? *b.* Yes.

c. Is there any indication of disease of the organs of respiration? *c.* No.

d. Number of respirations per minute? *d.* 16 per min.

13. *a.* Is the action of the heart uniform, free and steady? *a.* Yes.

b. Are its sounds and r-ythm regular and normal? *b.* Yes.

c. Is there any indication of disease of the heart or blood-vessels? *c.* No.

14. *a.* What is the character of the pulse? *a.* Soft, full.

b. Is the intermittent irregular or unsteady? *b.* No.

c. What is the pulse rate? *c.* 68 per min.

15. *a.* Is there any disease or disorder of the stomach or abdominal organs? *a.* No.

b. Is there any indication of disease of the urinary organs? *b.* No.

16. Chemical examination of the urine must be made in all cases: Reaction, acid; sp. gravity, 1.025; albumen, none; sugar, none. Do you know that the applicant passed the specimen? Yes.

17. *a.* Has party ever had any severe illness or injury, or undergone any surgical operation? *a.* No.

b. Is there any indication that the party is not now entirely well? *b.* No.

c. Is the party deaf, dumb, blind, lame, deformed or maimed in any way? *c.* No.

18. Is there any indication which leads you to suppose that the party has led or now leads other than a temperate life; or that the present or past habits are, or have been, faulty in any respect? No.

19. Is there *apparent* in the person examined, any predisposition, either hereditary or acquired, to any local or constitutional disease? No.

153 20. Has the applicant the appearance of an overworked person? No.

21. Do you consider the party's present residence or occupation affects his longevity unfavorably? If so how and to what extent? No.

23. *a*. Do you find the party in perfect health and safely insurable? Yes.

b. Do you recommend that the policy be issued? (Yes or no.) Yes.

I have examined the applicant in private, and witnessed his signature.

J. B. SCHUELLER, M. D.,
Medical Examiner.

Examined at Columbus, Ohio, this seventeenth day of September, 1895.

EXHIBIT No. 3.

Age, 31. Plan, 20 E. Policy No. 41531. Amount, $5,000. On the life of George E. Warren. John Hancock Mutual Life Insurance Company of Boston. Premium due Sept. 27th, $238.00.

No. 41531. Amount, $5,000.

The John Hancock Mutual Life Insurance Company of Boston, Mass.,

In consideration of the premium of two hundred and thirty-eight dollars, to be paid on or before the twenty-seventh day of September in every year, promises to pay at its office in Boston five thousand dollars to George E. Warren, of Prospect, Ohio, the insured in this policy, twenty years from the date hereof, or, in case of prior decease, to his father, William M. Warren, if then living, otherwise to the executors or administrators of said insured, upon satisfactory proof to it, at its office in Boston, of the death of the insured; deducting therefrom any indebtedness to this company of the other parties to this contract, and the premium, if any, for the balance of the policy year; subject to the following conditions:

This policy shall not take effect until delivered and the first premium hereon paid during the lifetime and good health of the insured.

If any of the statements made in the application for this policy,
which application is hereby referred to and made a part
154 hereof, are in any respect untrue, or if any of said premiums
shall not be paid when due, this policy shall be void, except as hereinafter agreed.

This policy shall be incontestable after two years from its date.

If the third, or any subsequent annual premium or installment thereon, shall not be paid when due, this policy shall not become void, but the company will (there being no existing indebtedness as aforesaid)—

After payment of premiums for—	Without any action on the part of the insured, continues this policy as paid-up insurance, for—	Pay on legal surrender on any anniversary of its issue a cash value of—
2 full years	$250	$292.65
3 " "	850	465.20
4 " "	1,145	645.45
5 " "	1,430	833.70
6 " "	1,710	1,030.50
7 " "	1,980	1,236.20
8 " "	2,250	1,451.40
9 " "	2,510	1,676.55
10 " "	2,770	1,912.20
11 " "	3,015	2,159.05
12 " "	3,260	2,417.60
13 " "	3,500	2,688.40
14 " "	3,730	2,972.20
15 " "	3,955	3,269.70
16 " "	4,175	3,581.85
17 " "	4,390	3,909.60
18 " "	4,600	4,254.15
19 " "	4,800	4,617.25
20 " "	5,000	5,000.00

NOTE.—If surplus is applied to purchase of additional insurance, the sums in the above table will be increased.

No suit shall be brought against the company on any claim under this policy, unless commenced within two years from the time when the right of action accrues.

Any assignment of this policy shall be void, unless assented to in writing by the secretary, and the claim of any assignee shall be subject to proof of interest.

155 No person except the president or secretary is authorized to make, alter or discharge contracts or waive forfeitures.

This contract is made and to be performed in the Commonwealth of Massachusetts.

In witness whereof, the John Hancock Mutual Life Insurance Company has, by its president and secretary, executed and delivered this contract, at Boston, on this twenty-seventh day of September, A. D. 1895.

S. H. RHODES, *President.*

ROWLAND O. LAMB, *Secretary.*

The remainder of this exhibit is not printed because it is the same as Exhibit No. 1, already printed.

EXHIBIT No. 4.

Memo. to be filled only at the home office.

Received at Boston, Oct. 1, 1895.

Policy No. 41531.

Policy Statement.

Commencing Sept. 27, 1895. Age, 31. Amount insured, $5,000. Kind of policy, 20 end. Annual rate, $288. Payable annually.

Application to the John Hancock Mutual Life Insurance Company, Boston, Mass.—Declarations made to the medical examiner, in answer to questions to be asked only by him, in private, and answered by the person examined, the answers forming part of the policy contract.

1. Full name, George E. Warren.
2. Place of birth—town, Warrensburg; county, Delaware; State, Ohio.
3. Date of birth—year, 1864; month, December; day, sixteenth.
4. Age at next birthday, 31 years.
5. Residence—town, Prospect; county, Marion; State, Ohio.
6. *a.* Present occupation? Wholesale dealer in hay and grain.

The remainder of this exhibit is not printed because it is the same as Exhibit No. 1, already printed.

156 EXHIBIT No. 4*a*.

AGENCY AT COLUMBUS, *Sept. 27th*, 1895.

To the John Hancock Mutual Life Insurance Co. of Boston, Mass.:

I hereby amend my application for life insurance made to your company on the 17th day of Sept., 1895, in the following particulars, and these amendments and declarations are to be taken and considered as a part of said application, and subject to the agreements therein contained, and the said application and these amendments are to be taken as a whole, and considered as the basis of the contract for insurance:

Increase application for additional policy of $5,000 as per application of this date. And I hereby certify that I have had no sickness, injury, or impairment of health since the date of said application.

GEORGE E. WARREN.

Witness:
J. C. CAMPBELL.

EXHIBIT No. 4*b*.

SEPT. 30, 1895.

Application is hereby made to the John Hancock Mutual Life Insurance Company of Boston, Mass., for insurance on my life on the twenty-year endowment plan, to the amount of $5,000.00, for

the benefit of William M. Warren, my father, the insurance to revert to me in the event of his prior decease.

I wish to pay the premium annually.

I was born on the 16th day of Dec., 1864, and shall be 31 years of age next birthday.

The only insurance on my life is as follows:

Name of company.	Am't of ins.	Plan.	When issued.
John Hancock.....	$5,000	Twenty-year end....	Sept. 20, 1895
Equitable.....	5,000	Tontine.....	" 1894
"	3,000	"	" 16, 1892
N. Y. Home.....	2,000	Endowmont	Oct. 1, 1888

I have never made an application to insure my life to any company nor agent upon which a policy has not been issued, nor is there one now pending. My occupation is hay and grain dealer.

Dated at Columbus, Ohio, Sept. 27, 1895.

GEORGE E. WARREN, *Applicant.*

P. O. address, Prospect, Ohio.

This application was obtained by G. W. Wolfley, agent at Columbus, Ohio.

Sent to the home office by J. C. Campbell, State agent, Ohio and W. Va., Columbus.

157 EXHIBIT No. 5.

1, 9, 1895.

Application is hereby made to the John Hancock Mutual Life Insurance Company of Boston, Mass., for insurance on my life, on the twenty-year endowment plan, to the amount of $5,000.00, for the benefit of my estate.

I wish to pay the premium annually, and to have surplus applied to increase amount of policy.

I was born on the 16th day of December, 1864, and shall be 31 years of age next birthday.

The only insurance on my life is as follows:

Name of company.	Am't of ins.	Plan.	When issued.
Equitable of N. Y.	$3,000	20-payment....	Oct., 1892
" "	5,000	One life	Aug., 1894
Home of New York	2,000	20-year end....	Oct., 1889

I have never made an application to insure my life to any company nor agent upon which a policy has not been issued, nor is there one now pending. My occupation is hay and grain dealer.

Dated at Columbus, O., Sept. 17, 1895.

GEORGE E. WARREN, *Applicant.*

P. O. address, Prospect, Ohio.

This application was obtained by G. W. Wolfley, agent at Columbus, Ohio.

Sent to the home office by J. C. Campbell, State agent, Ohio and W. Va., Columbus, O.

158 THE STATE OF OHIO, }
City of Columbus. }

Supreme Court of Ohio.

I, Josiah B. Allen, clerk of the supreme court of Ohio, do hereby certify that the printed record hereto attached is a true copy of the printed record filed in this court October 23, A. D. 1897, and used by this court in the consideration of cause, The John Hancock Mutual Life Insurance Company of Massachusetts *vs.* William M. Warren.

Seal of the Supreme Court of the State of Ohio.

In witness whereof I have hereunto subscribed my name and affixed the seal of said supreme court this 29th day of January, A. D. 1900.

JOSIAH B. ALLEN, *Clerk*,
By JOHN P. DANA, *Deputy*.

159 In the Supreme Court of the United States.

THE JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY,
Plaintiff in Error,
v.
WILLIAM M. WARREN, Defendant in error. } No.—.

To the Honorable John M. Harlan, associate justice of the Supreme Court of the United States:

Your petitioner, The John Hancock Mutual Life Insurance Company, is a corporation duly organized, incorporated, and existing under the laws of the State of Massachusetts, and is under the laws of the State of Massachusetts and the State of Ohio duly authorized to transact business in the State of Ohio, and now represents and sets forth—

That at the January term, 1897, of the court of common pleas of Delaware county, in the State of Ohio, on the 26th day of January, 1897, in a case wherein William M. Warren was plaintiff and it, the said John Hancock Mutual Life Insurance Company, was defendant, it rendered a judgment against the said The John Hancock Mutual Life Insurance Company for the sum of five thousand three hundred and forty-three and $\frac{33}{100}$ dollars ($5,343.33).

That thereupon your petitioner in accordance with the law and within the time prescribed by law, caused a petition in error to be filed in the circuit court of Delaware county, in the State of Ohio, to reverse said judgment and order, but the said judgment and order were at the May term of said circuit court, to wit, on
160 the 26th day of May, 1897, duly affirmed by said circuit court.

That your petitioner thereupon caused a petition in error in said cause to be filed in the supreme court of the State of Ohio, together with the original pleadings, the bill of exceptions taken and allowed in the trial of said action, and a transcript of the docket and journals of said common pleas and circuit courts, for the purpose of

having said judgment and order of said circuit court reviewed and reversed, but the same were, at the October term, 1898, of said supreme court, affirmed by said court.

Your petitioner further represents that said supreme court of the State of Ohio, in rendering said judgment of affirmance, ordered that it be certified that in the rendition of said judgment it became and was material to the case to determine whether section 3625 of the laws of the State of Ohio, as found in Bates's edition of the Revised Statutes of Ohio, published in 1897, and which law has been in force since May 15th, 1878, is the law of said State of Ohio, and was and is of binding force and validity against said plaintiff in error.

The said supreme court further ordered in said entry that it be certified that the plaintiff in error, The John Hancock Mutual Life Insurance Company, on a hearing of said cause, claimed and asked the supreme court of Ohio to hold that the said law is in violation of and repugnant to article V and section one of article XIV of the amendments and other provisions of the Constitution of the United States.

The said supreme court further ordered it to be certified that it decided and adjudged that said law of the State of Ohio, as aforesaid, was not in violation of nor repugnant to said provisions of the Constitution of the United States above referred to, and decided and adjudged that said act was and is valid and binding upon said plaintiff in error, and thereupon rendered said judgment of affirmance, which is founded upon said decision of the supreme
161 court of Ohio, that said act was and is of binding force and validity against the said plaintiff in error.

The said supreme court further ordered it to be certified that the question of the validity of said statute law of the State of Ohio, in the particular hereinbefore mentioned, was drawn in question on the hearing and the decision of this case, as being repugnant to said article V and section one of article XIV of the amendments and other provisions of the Constitution of the United States, and that the decision of this court was in favor of the validity of said act as against the said plaintiff in error, and that this court further certified that it is the highest court of law or equity in the State of Ohio in which a decision of the said case could be had.

Wherefore your petitioner asks leave to have a writ of error in its behalf, to the end that it may be determined by the judgment of the Supreme Court of the United States whether said act is not in conflict with the provisions of the Constitution of the United States, and it prays further for a supersedeas, and that the amount of the bond therefor may be fixed by your honor.

GEO. K. NASH AND
W. Z. DAVIS,
Attorneys for Petitioner.

162 [Endorsed:] No. —. In the Supreme Court of the United States. The John Hancock Mutual Life Insurance Company, plaintiff in error, *v.* William M. Warren, defendant in error. Writ

of error allowed and to operate as supersedeas when bond in $7,500 is given. A bond for costs can be given in $500. John M. Harlan, asso. justice Sup. Ct. U. S. Dec. 16th, 1899.

163 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the supreme court of the State of Ohio, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The John Hancock Mutual Life Insurance Company, plaintiff in error, and William M. Warren, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of
164 the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 29th day of December, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

165 UNITED STATES OF AMERICA, *ss:*

To William M. Warren, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Ohio, wherein The John Hancock Mutual Life Insurance Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John M. Harlan, associate justice of the Supreme Court of the United States, this 29th day of December, in the year of our Lord one thousand eight hundred and ninety-nine.

JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

166 [Endorsed:] Marshal's civil docket No. 1203. United States Supreme Court. The John Hancock Mutual Life Insurance Company, plaintiff in error, *vs.* William M. Warren, defendant in error. Vivian J. Fagin, United States marshal, S. D. O. Orig.

On this 13th day of January, in the year of our Lord one thousand nine hundred, personally appeared Albert Bauer, deputy U. S. marshal, before me, the subscriber, and makes oath that he delivered a true copy of the within citation to William M. Warren, at Warrensburg, Ohio, as within commanded.

ALBERT BAUER,
Deputy U. S. Marshal, S. D. O.,
For VIVIAN J. FAGIN,
U. S. Marshal, S. D. O.

Fees.

Service	2.00
33 mi. expense in suit	3.85
	$5.85

Sworn to and subscribed the 13th day of January, A. D. 1900.

[Seal United States District Court, Southern Dist. Ohio.]

C. P. WHITE,
Dep. Clerk U. S. Courts, Southern Dist. of Ohio.

167 28779.

Know all men by these presents that we, The John Hancock Mutual Life Insurance Company, as principal, and National Surety Company, having an office and principal place of business at 346 Broadway, New York city, as surety, are held and firmly bound unto William M. Warren in the full and just sum of seventy-five

hundred ($7,500.00) dollars, to be paid to the said William M. Warren, his certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of December, in the year of our Lord one thousand eight hundred and ninety-9.

Whereas lately, at a supreme court of the State of Ohio, in a suit depending in said court between The John Hancock Mutual Life Insurance Company, plaintiff in error, and William M. Warren, defendant in error, a judgment was rendered against the said The John Hancock Mutual Life Insurance Company, and the said The John Hancock Mutual Life Insurance Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said William M. Warren, citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within — days from the date thereof:

Now, the condition of the above obligation is such that if the said The John Hancock Mutual Life Insurance Company shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

{Seal John Hancock Mutual Life Insurance Company. Incorp. 1862.}

JOHN HANCOCK MUTUAL LIFE INSURANCE CO,
By JAMES M. GLEASON, *Treasurer.* [SEAL.]

[Seal National Surety Company, New York. Incorporated 1897.]

NATIONAL SURETY COMPANY, [SEAL.]
By GEO. A. VANDEVEER, *2d V. President.*
Attest: WM. R. WORRALL, *Res. Ass't Secretary.*

Sealed and delivered in presence of—
——. ——. [Illegible.]
JAS. W. MITCHELL.

Approved by—
——. ——,
Justice of the Supreme Court of the United States.

Executed in duplicate.
Tax on this bond paid by stamps affixed to original.

168 COUNTY OF NEW YORK, *ss:*

On this 21st day of December, 1899, before me, personally appeared Geo. A. Vandeveer, 2nd vice-president of the National Surety Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the county of New York; that he is the 2nd vice-president of the National Surety Company,

the corporation described in and which executed the above instrument; that he knows the corporate seal of said company; that the seal affixed to the within instrument is such corporate seal; that it was affixed by order of the board of directors of said company, and that he signed said instrument as 2nd vice-president of said company by like authority, and that the liabilities of said company do not exceed its assets, as ascertained in the manner provided in section 3, chapter 720 of New York Session Laws of 1893; and the said Geo. A. Vandeveer further said that he is acquainted with Wm. R. Worrall and knows him to be the res. ass't secretary of said company; that the signature of the said Wm. R. Worrall subscribed to the said instrument is in the genuine handwriting of the said Wm. R. Worrall, and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said Geo. A. Vandeveer, 2nd vice-president.

{ Seal of John D. Caren, Notary Public, Orange County, — New York County. }

JOHN D. CAREN,
Notary Public, Orange Co.

Certificate filed — N. Y. Co.

Copy of By-law.

Be it remembered that at a regular meeting of the board of directors of the National Surety Company, duly called and held on the twentieth day of May, 1897, a quorum being present, the following by-law was adopted:

"ARTICLE XIII. SEC. 1. All bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature thereof, shall be signed by the president, the vice-president, the second vice-president, a resident vice-president, or an attorney-in-fact, and, except when signed by an attorney-in-fact, shall have the seal of the company affixed thereto, duly attested by the secretary, assistant secretary or a resident assistant secretary. The vice-president, second vice-president and resident vice-presidents shall each have authority to sign such instruments whether the president be absent or incapacitated or not; and the assistant secretary and resident assistant secretaries shall each have authority to seal and attest such instruments, whether the secretary be absent or incapacitated or not. All such instruments executed as herein provided shall be as binding upon the company as if the same were signed by the president, duly sealed and attested by the secretary."

COUNTY OF NEW YORK, *ss:*

I, Wm. R. Worrall, res. ass't secretary of the National Surety Company, have compared the foregoing by-law with the original thereof as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original by-law.

Given under my hand and the seal of the company, at the county of New York, this 21st day of December, 1899.

{Seal of National Surety Company, New York. Incorporated 1897.}

WM. R. WORRALL,
Res. Ass't Secretary.

[Endorsed:] Filed Jan. 2, 1900, in supreme court of Ohio, J. B. Allen, clerk.

169 THE STATE OF OHIO, }
City of Columbus. }

Supreme Court of Ohio.

I, Josiah B. Allen, clerk of the supreme court of Ohio, do hereby certify that the bond hereto attached is a true copy of the bond filed in this court January 2nd, A. D. 1900, in cause The John Hancock Mutual Life Insurance Company of Massachusetts *vs.* William M. Warren, in which writ of error has been allowed in the Supreme Court of the United States, and that said bond was approved by Hon. John M. Harlan, one of the justices of said court, on the 29th day of December, A. D. 1899, and that the tax on said bond was paid by stamps affixed to the original on file in this court.

Seal of the Supreme Court of the State of Ohio.

In witness whereof I have hereunto subscribed my name and affixed the seal of said supreme court this 29th day of January, A. D. 1900.

JOSIAH B. ALLEN, *Clerk,*
By JOHN P. DANA, *Deputy.*

170 *Certified Transcript of Docket and Journal Entries.*

THE STATE OF OHIO, }
City of Columbus, } *ss:*

In the Supreme Court of Ohio, January Term, A. D. 1897.

In the record and proceedings then and there had and held, among other things, is the following, to wit:

THE JOHN HANCOCK MUTUAL LIFE INSURANCE Company of Massachusetts, Plaintiff in Error,
vs.
WILLIAM M. WARREN, Defendant in Error.
} # 5693. Error to the Circuit Court of Delaware County.

Aug. 30, 1897.—Petition in error & waiver of summons filed.
" " " —Circuit court transcript filed.
" " " —Original papers & bill of exceptions filed.
" " " —Papers delivered to Harry Sager.
Oct. 23, " — " returned by " "
" " " —Printed record filed.

Oct. 25, 1897—Proof of service printed record filed.
" 26, " — " " " " " filed.
Feb. 19, 1898.—Motion by defendant to advance and notice filed.
" 23, " —Consent to motion by def't to advance filed.
Mar. 1, " —Journal entry:

Motion by defendant to advance cause No. 5693 on the general docket.

Ordered by the court that said motion be, and the same is hereby, allowed.

Order Book No. 16, page 14.

May 5, 1898.—Plaintiff's printed briefs filed.
" 9, " —Proofs (2) of service of plaintiff's printed brief filed.
June 29, " —Defendant's printed brief & proof of service filed.
Oct. 11, " —Journal entry:

This cause came on to be heard upon the transcript of the record of the circuit court of Delaware county and was argued by counsel. On consideration whereof it is ordered and adjudged by this court that the judgment of the said circuit court be, and the same is hereby, affirmed; and it appearing to the court that there were reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein. It is further ordered that the defendant in error recover from the plaintiff in error his costs herein expended, taxed at $—.

It is hereby certified by the court that upon the hearing and argument of this cause in this court the plaintiff in error, by its counsel, made the question in its brief that the statutes of this State requiring construction in the decision in this case and upon
171 which the rights of the parties depended were and are in conflict with the Constitution of the United States, and said question was made, argued, and relied upon by the plaintiff in error and was by this court decided adversely to said plaintiff in error.

And it is further ordered that it be certified that in the rendition of said judgment it became and was material to the case to determine whether section 3625 of the Laws of the State of Ohio, as found in Bates's edition of the Revised Statutes of Ohio published in 1897, and which law has been in force since May 15th, 1878, is a law of said State of Ohio and was and is of binding force and validity against the said plaintiff in error.

The court further orders that it be certified that the plaintiff in error on the hearing of said cause claimed and asked this court to hold that the said law is in violation of and repugnant to article V and section I of article XIV of the amendments and other provisions of the Constitution of the United States.

And this court orders it to be further certified that this court decided and adjudged that said law of the State of Ohio, as aforesaid, was not in violation of nor repugnant to said provisions of the Constitution of the United States above referred to, and decided and adjudged that said act was and is valid and binding upon said plaintiff in error, and thereupon rendered said judgment, which is founded upon said decision of this court that said act was and is of

binding force and validity against the said plaintiff in error, and this court further ordered a special mandate to carry said judgment into execution, as is shown by the entry heretofore made of said judgment and order.

And it is further ordered by this court to be certified that the question of the validity of said statute law of the State of Ohio in the particular mentioned hereinbefore was drawn in question on the hearing and decision of this cause as being repugnant to said article V and section I, article XIV, of the amendments, and other provisions of the Constitution of the United States, and that the decision of the court was in favor of the validity of said act as against the said plaintiff in error, and it is hereby certified that this court is the highest court of law and equity in the State of Ohio in which a decision of this case can be had.

Ordered that a special mandate be sent to the court of common pleas of Delaware county to carry this judgment into execution.

Ordered that a copy of this entry be certified to the clerk of the circuit court of Delaware county "for entry."

Order Book No. 16, pages 189, 190, and 257.

Oct. 18, 1898.—Mandate issued.
Jan'y 2, 1900.—Supersedeas bond in duplicate filed.

172 THE STATE OF OHIO, }
City of Columbus. }

In the Supreme Court of Ohio.

I, Josiah B. Allen, clerk of the supreme court of Ohio, do hereby certify that the decision in this case was handed down by the court on October 11th, 1898, and, upon application of counsel for plaintiff in error to have the entry of the judgment show that a constitutional question was raised, the court ordered the certificate above set forth, showing that fact to be entered December 23rd, 1898, and that the foregoing transcript of the docket and journal entries in cause The John Hancock Mutual Life Insurance Company of Massachusetts *vs.* William M. Warren is truly taken and correctly copied from the records of said court, to wit, from Minute Book No. 18, page 707, and Order Book No. 16, pages 14, 189, 190, and 257.

Seal of the Supreme Court of the State of Ohio.

In witness whereof I have hereunto subscribed my name and affixed the seal of said supreme court this 29th day of January, A. D. 1900.

JOSIAH B. ALLEN, *Clerk*,
By JOHN P. DANA, *Deputy*.

173 THE STATE OF OHIO, }
City of Columbus. }

In the Supreme Court of Ohio.

To the honorable the Supreme Court of the United States:

Pursuant to the command of your within writ of error, directed to us, we, under our seal, distinctly and openly, the record and proceedings within mentioned, with all things concerning the same, before the judges within named, in a certain authenticated transcript to this writ attached, send, as within we are commanded.

Seal of the Supreme Court of the State of Ohio.

In witness whereof I, Josiah B. Allen, clerk of the supreme court of Ohio, have set my hand and seal of said court this 29th day of January, A. D. 1900.

JOSIAH B. ALLEN, *Clerk*,
By JOHN P. DANA, *Deputy*.

173½ [Endorsed:] The John Hancock Mutual Life Ins. Co. vs. William M. Warren. Certified transcript.

Endorsed on cover: File No., 17,631. Ohio supreme court. Term No., 196. The John Hancock Mutual Life Insurance Company, plaintiff in error, *vs.* William M. Warren. Filed February 2nd, 1900.